

FILED
JUL 16 1993

OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

C & A CARBONE, INC.,
RECYCLING PRODUCTS OF ROCKLAND, INC.,
C & C REALTY, INC., and
ANGELO CARBONE

Petitioners,

v.

TOWN OF CLARKSTOWN,

Respondent.

On Writ of Certiorari to the Supreme Court,
Appellate Division, Second Department
of the State of New York

JOINT APPENDIX

BETTY JO CHRISTIAN
Counsel of Record
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for Petitioners

WILLIAM C. BRASHARES
Counsel of Record
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Ave., N.W.
Washington, D.C. 20005
(202) 434-7300
Counsel for Respondent

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1993
CERTIORARI GRANTED MAY 24, 1993

BEST AVAILABLE COPY

TABLE OF CONTENTS

<i>Joint Appendix</i>	Page
Docket entries, New York Court of Appeals	1
Docket entries, New York Supreme Court, Appellate Division	2
Docket entries, New York Supreme Court, Rockland County	3
Judgment with notice of entry (Rec. 22-24)	4
Order to show cause for preliminary and permanent injunction (Rec. 45-46)	7
Affidavit of Charles E. Holbrook (Rec. 58-61)	9
Affidavit of Angelo Carbone (Rec. 81-82)	12
Affidavit of Paul J. D'Alessandro (Rec. 113-19)	14
Affidavit of Murray N. Jacobson (Rec. 120-34)	20
Minutes of public hearing, Town of Clarkstown, Nov. 14, 1989 (Rec. 142-59)	34
Permit No. 4429 (Rec. 160-62)	69
Letter from Margaret Duke, New York State Dept. of Environmental Conservation, to Angelo Carbone, C & A Carbone, Inc., April 5, 1991 (Rec. 163-64)	73
Letter from Ajay R. Shah, New York State Dept. of Environmental Conservation, to Michael A. Cech, County of Rockland, April 2, 1991 (Rec. 165-68)	76
Environmental Assessment Form (Rec. 240-45)	81
Map, Plan and Report for the Establishment of Town Garbage and Refuse District (Rec. 249-80)	86
<i>C & A Carbone, Inc. v. Holbrook</i> (N.Y. Sup. Ct. Oct. 18, 1990) (Rec. 296-97)	110
<i>C & A Carbone, Inc. v. Holbrook</i> (N.Y. Sup. Ct. Feb. 27, 1991) (Rec. 298-99)	112
Affidavit of Angelo Carbone (Rec. 331-39)	116
Letter from Richard Gardineer, New York State Dept. of Environmental Conservation, to Angelo Carbone, C & A Carbone, Inc., June 8, 1991 (Rec. 382-83)	124

TABLE OF CONTENTS—Continued

	Page
<i>Appendix to Petition for Certiorari</i>	
<i>Town of Clarkstown v. C & A Carbone, Inc.</i> (N.Y. App. Div. Aug. 31, 1992)	1a
<i>Town of Clarkstown v. C & A Carbone, Inc.</i> (N.Y. Sup. Ct. Sept. 16, 1991)	16a
<i>Town of Clarkstown v. C & A Carbone, Inc.</i> (N.Y. Sup. Ct. July 15, 1991)	22a
<i>C & A Carbone, Inc. v. Town of Clarkstown</i> (S.D.N.Y. July 11, 1991)	34a
<i>Town of Clarkstown v. C & A Carbone, Inc.</i> (N.Y. Oct. 27, 1992)	47a
<i>Town of Clarkstown, New York, Local Laws 1990, No. 9</i>	48a
<i>Town of Clarkstown v. C & A Carbone, Inc.</i> (N.Y. Sup. Ct.) (First Amended Answer To First Amended Complaint)	55a

NEW YORK COURT OF APPEALS

DOCKET ENTRIES

9/11/92	Moving Papers requesting permission to appeal;
9/11/92	Intermediate court record and brief;
9/25/92	Papers in opposition and copy of brief;

NEW YORK SUPREME COURT
APPELLATE DIVISION

RE: Town of Clarkstown

-against-

C & A CARBONE, RECYCLING PRODUCTS of ROCK-
LAND, INC., C&C REALTY, INC., ANGELO CARBONE,
et al.

Rockland County Clerk's #: 1549/91 (RJS)

DOCKET ENTRIES

Appellate Division Docket—No 91/07786

Motion for State	08/22/91
Motion for Consolidation of Appeals	10/02/91
Filings:	
Record & Brief	10/03/91
Respondent's Brief	10/28/91
Reply Brief	11/04/91
Decision to Dismiss Appeal	08/31/92

NEW YORK SUPREME COURT
ROCKLAND COUNTY

DOCKET ENTRIES

ACTIONS

03/19/91	RJI—STOLARIK
07/15/91	EXHIBITS L-R
07/15/91	REPLY MEMORANDUM
07/15/91	ANSWER
* * *	
07/15/91	COMPLAINT
07/15/91	REPLY
* * *	
07/15/91	DECISION & ORDER—L46 P1396
07/15/91	ORDER TO SHOW CAUSE—L46 P1394
07/15/91	AFFIDAVIT
07/15/91	SUMMONS AND COMPLAINT
07/15/91	EXHIBITS A-D
07/24/91	ORDER L46 P1998
08/01/91	MISCELLANEOUS PAPERS
08/01/91	JUDGMENT—L46 P2463
08/09/91	NOTICE OF APPEAL
08/09/91	AFFIDAVIT OF SERVICE
08/09/91	NOTICE OF APPEAL
08/09/91	AFFIDAVIT OF SERVICE
09/19/91	MEMORANDUM
09/19/91	MINUTES
* * *	
09/19/91	ORDER—B47 P1834
09/24/91	NOTICE OF APPEAL

Judgment with Notice of Entry, Dated July 31, 1991 [22-24]

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

Index No.: 1549/91

THE TOWN OF CLARKSTOWN,
-against- Plaintiff,

C&A CARBONE, INC.,
RECYCLING PRODUCTS OF ROCKLAND, INC.,
C&C REALTY, INC.,
ANGELO CARBONE and
"JOHN DOE 1 through 6",
Defendants.

JUDGMENT

PRESENT: Hon. Robert J. Stolarik, J.S.C.

Plaintiff having moved this Court for an order pursuant to CPLR § 6311 enjoining the defendants from (1) unlawfully disposing of solid waste in violation of Clarkstown's Local Law No. 9 of 1990; (2) operating a transfer station at 183 Western Highway, West Nyack, New York in violation of Chapter 106 of the Clarkstown Town Code; and (3) from conducting illegal business operations at defendants' premises, and the application having been fully submitted to the Hon. Robert J. Stolarik on May 16, 1991 at which time the parties stipulated that the motion be treated as one for summary judgment in accordance with CPLR 3212 and after reading and filing the order to show cause dated March 18, 1991, the supporting affidavits and annexed exhibits, plaintiff's summons and

amended verified complaint, the affirmation and supplemental affirmation in opposition of Kenneth H. Resnik, Esq. and opposing affidavits, defendants' amended answer and counterclaims, movant's supplemental affidavits and the attorney's statement of Richard A. Glickel with annexed exhibits submitted in support of plaintiff's application and the memoranda of law and reply memoranda of the respective parties, and said motion having been granted by decision and order of this Court duly made and entered on July 15, 1991 directing, *inter alia*, the submission of a judgment in favor of the plaintiff,

NOW, on motion of Richard A. Glickel, attorney for plaintiff, it is

ADJUDGED and DECREED that Clarkstown's Local Law No. 1990 is valid *and* constitutional; and it is further

ADJUDGED and DECREED that the defendants are in violation of the provisions of Clarkstown's Local Law No. 9 of 1990; and it is further

ADJUDGED and DECREED that the plaintiff is entitled to the injunctive relief sought; and it is

ORDERED and ADJUDGED that the defendants are hereby restrained and permanently enjoined from operating their respective business or suffering and/or permitting such business operations at the premises owned by them, in violation of Clarkstown's Local Law No. 9 of 1990 and the defendants are hereby directed to immediately cease all such operations in violation of Clarkstown's Local Law No. 9 of 1990 and Chapter 106 of the Clarkstown Town Code at the premises located at 183 Western Highway, West Nyack, New York, and it is further

ORDERED that all counsel shall appear at chambers on Wednesday, August 7, 1991 at 9 a.m. to attend a conference for the scheduling of disclosure in furtherance of the assessment of damages.

Dated: New City, New York
July 31, 1991

/s/ Robert J. Stolarik
HON. ROBERT J. STOLARIK
J.S.C.

To:

Richard A. Glickel
Special Counsel to
Murray N. Jacobson, Town Attorney
Attorney for Plaintiff
Two Crosfield Avenue—Suite 205
West Nyack, New York 10994

Granik Silverman, et al.
Attorneys for Defendants
254 South Main Street
P.O. Box 370
New City, New York 10956

**Order to Show Cause for Preliminary and Permanent
Injunction—Proposed Summons and Verified Complaint
[45-47]**

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

[Title Omitted in Printing]

ORDER TO SHOW CAUSE

PRESENT: HON. JOAN B. LEFKOWITZ, Justice of the
Supreme Court.

Upon reading the summons and verified complaint and the affidavits of Paul J. D'Alessandro, Administrative Lieutenant, John P. Kubran, Detective Lieutenant, both of the Clarkstown Police Department, Charles E. Holbrook, Supervisor of the Town of Clarkstown, and Murray N. Jacobson, Town Attorney of the Town of Clarkstown, each sworn to on the 18th day of March, 1991, from which it appears that this action is brought for a permanent injunction restraining and enjoining the defendants from operating a transfer station and from unlawfully disposing of acceptable waste in violation of Local Law No. 9 of 1990 and those chapters of the Town Code regulating the transportation and disposal of solid waste within the Town of Clarkstown, and the plaintiff having applied for a preliminary injunction and a temporary restraining order herein,

Let the defendants show cause before this Court at the Rockland County Courthouse, Main Street, New City, New York on the 29th day of March, 1991 at 9:30 a.m., or as soon thereafter as counsel can be heard why an

ORDERED, that pending the hearing and determination of this motion, the defendants be and they are hereby restrained and enjoined from operating a transfer station and from unlawfully disposing of solid waste generated within the Town of Clarkstown, and the defendants shall immediately cease all illegal business operations at the premises known as 183 Western Highway, West Nyack, New York, pending the hearing of plaintiff's motion, and it is further

ORDERED, that service of a copy of this order and the papers upon which it is granted upon defendants, on or before the 21st day of March, 1991 be deemed good and sufficient service.

Dated: New City, New York
March 18, 1991

And it is further ordered that the phrases "and without" and "and determination" are stricken provided that defendants post a bond of \$10,000 with the Commissioner of Finance of Rockland County.

/s/ Joan B. Lefkowitz
J.S.C.

March 19, 1991

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ROCKLAND) SS.:

CHARLES E. HOLBROOK, being duly sworn, deposes and says:

1. That he is the duly elected Supervisor of the Town of Clarkstown and a member of the Clarkstown Town Board and he respectfully makes this affidavit in support of the present application for an order restraining and enjoining the defendants from operating a transfer station and from unlawfully disposing of solid waste in violation of Local Law No. 9 of 1990 and the Town Code of the Town of Clarkstown and directing that the defendants immediately cease all illegal business operations at 183 Western Highway, West Nyack, New York.

2. That on December 31, 1990 the Clarkstown Town Board duly passed and adopted Local Law No. 9 of 1990 entitled "Solid Waste Transportation and Disposal." A certified copy of Local Law No. 9 of 1990 is annexed to the complaint herein as exhibit "A."

3. Local Law No. 9 of 1990 was enacted by the Town Board in response to the closing of the TOWN's landfill operation at the end of 1990 and is intended to address

the transportation and disposal of solid waste generated within the TOWN through the construction and operation of a solid waste facility known as a "transfer station" through which all acceptable solid waste generated by the residents of the TOWN and collected by duly licensed private carters would be weighed, baled and loaded for transport and disposal to out-of-state landfills.

4. The contract for the construction and operation of the TOWN's transfer station was awarded pursuant to proposal and bid in early 1990 and the facility has been operational since the beginning of this year. The TOWN is obligated to deliver for transport and disposal through this facility a specified annual tonnage of acceptable solid waste generated within the Towns of Clarkstown and Orangetown¹ and will be assessed a penalty for each ton under the requisite annual minimum of 120,000 tons.

5. Local Law No. 9 of 1990 directs that *all* acceptable waste generated within the territorial limits of the TOWN is to be transported and delivered to the TOWN's transfer station at Route 303 in West Nyack or to other disposal or recycling facilities operated by the TOWN or recycling centers established by special permit. In the case of acceptable waste brought to a recycling facility the law requires that the unrecycled residue be disposed of at the TOWN's transfer station.

6. Since 1989 residents of the TOWN have been separating at the point of origin or generation recyclable materials. This program has proved to be enormously successful and the list of recyclables has been expanded to include newspapers, glass, aluminum cans, magazines and junk mail. By June of this year plastic bottles and

¹ Upon information and belief on Monday, March 11, 1991, the Orangetown Town Board unanimously enacted a local law similar to Clarkstown's Local Law No. 9 of 1990 requiring all carters who pick up solid waste within the Town of Orangetown is to be transported and delivered to the Clarkstown transfer station at Route 303, West Nyack, New York.

containers will be included. Thus, there remains very little recyclable material in the acceptable solid waste generated within the TOWN to be collected by the carters permitted to operate within the TOWN.

7. By unlawfully bypassing the TOWN's transfer station, the defendants are costing the TOWN and its residents thousands of dollars daily in uncollected revenues as well as increasing the likelihood of the TOWN's failure to meet its contractual obligation to the transfer station.

8. By receiving, baling, and loading for transport and disposal solid waste generated within and without the Town of Clarkstown, the defendants are operating a transfer station in violation of Local Law No. 9 of 1990 and Chapter 106 of the Clarkstown Town Code.

9. Without question the TOWN has already suffered irreparable harm in losses estimated in the hundreds of thousands of dollars. The ongoing investigation by the TOWN's law enforcement officers has established that the defendants are acting in violation of said laws and ordinances and will continue to do so unless they are immediately restrained and enjoined by order of this Court and directed to cease all illegal business operations at the premises owned and/or operated by said defendants at 183 Western Highway, West Nyack, New York.

WHEREFORE, deponent respectfully requests an order of this Court restraining and enjoining the defendants from unlawfully disposing of solid waste in violation of Local Law No. 9 of 1990 and those chapters of the Town Code regulating the transportation of solid waste within the Town of Clarkstown and directing that the defendants immediately cease all illegal business operations at 183 Western Highway, West Nyack, New York and for such other and further relief as to the Court may seem just and proper.

/s/ Charles E. Holbrook
CHARLES E. HOLBROOK

[Notary Omitted in Printing]

**Affidavit of Angelo Carbone, Sworn to April 3, 1991,
for Defendants, in Opposition to Application [81-82]**

**SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

[Title Omitted in Printing]

AFFIDAVIT

1. ANGELO CARBONE, being duly sworn, deposes and says as follows:

2. I am a defendant in the above entitled action and an officer of C & A Carbone, Inc. and as such am fully familiar with the underlying facts and circumstances of the within matter. I have read plaintiff's application and supporting papers and make this affidavit in opposition to plaintiff's motion for a preliminary injunction pending a final determination of the merits of the case.

3. C & A Carbone, Inc. maintains a recycling facility located at 183 Western Highway, West Nyack, Town of Clarkstown, County of Rockland. At that site, waste is received from out of state as well as parts of New York outside the Town of Clarkstown.

4. After receipt, the waste is "shaken down" or separated, the recyclables are removed and the remaining waste left after separation is prepared for disposal.

5. Once the above process is completed, the various components are shipped by ICC licensed truckers from our site in New York to facilities in the midwest and south including landfills, resource recovery sites and other disposal facilities in Ohio, Delaware, Pennsylvania,

Kentucky, Indiana and Florida. On a weekly basis, C & A Carbone, Inc. processes and ships over one hundred fifty (150) tons of waste interstate, using ICC licensed truckers for the transport.

/s/ Angelo Carbone
ANGELO CARBONE

[Notary Omitted in Printing]

Affidavit of Paul J. D'Alessandro, Sworn to April 18, 1991,
for Plaintiff, in Further Support of Application [113-119]

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)
 ss.:
COUNTY OF ROCKLAND)

PAUL J. D'ALESSANDRO, being duly sworn, deposes and says:

1. That he is an administrative lieutenant for the Clarkstown Police Department and he makes this affidavit in support of plaintiff's application for summary judgment herein or, alternatively for an injunction *pendente lite* and in reply to the allegations contained in the answering affidavits of the defendant Angelo Carbone and of one Gil Font.

2. There is no question but that following the motor vehicle accident of March 8, 1991, (as previously described in the affidavits of myself and Lt. John Kubran both dated March 18, 1991) wherein a tractor trailer load of garbage was torn open when it struck the Route 59 overpass to the Palisades Interstate Parkway, that a number of similar vehicles¹ were followed from the de-

¹ In all a total of eleven (11) tractor-trailer loads were diverted to the TOWN's transfer station from March 9 through March 18, 1991, where they were weighed and off-loaded. The said eleven loads

fendants' location en route to the New York State Thruway, detained and directed to the Town of Clarkstown's transfer station on Route 303 in West Nyack, New York. It was then and is now the position of the Town of Clarkstown and its law enforcement officers that the defendants are operating an illegal transfer station in violation of the Clarkstown Town Code, specifically, Chapter 106 entitled "Zoning".²

3. Undoubtedly, Mr. Font was advised of the TOWN's position vis-a-vis the only legally permitted transfer station within the Town of Clarkstown.

4. Deponent never suggested to Mr. Font that "Miele could help him in New Jersey" nor would deponent ever offer such advice inasmuch as solid waste transferred from the Miele facility in New Jersey must go to the Bergen County transfer station for baling and out-of-state transport.

5. Not a single driver was intimidated or otherwise threatened in any way by either, deponent or any other member of the TOWN's police department and the allegation in the Font affidavit that a driver was "frightened" into carrying a load to the State of Pennsylvania is a ridiculous lie. In fact, it was only as an attempt to help those drivers who had expressed concern over having to travel great distances only to return empty, that they were advised that they might be able to make arrangements with Clarkstown Recycling Center, Inc. for their reloading with acceptable solid waste which had lawfully been delivered to and baled at the TOWN's transfer station.

represent a minuscule percentage of the total number of loads transported from the defendants' location within this time frame.

² Apparently the defendants had been operating an illegal transfer station under the guise of a so-called "recycling facility or center". However, in their complaint filed in the United States District Court on March 27, 1991, the defendants boldly assert their direct competition with the TOWN's transfer station.

6. Every vehicle that was directed to the TOWN's transfer station was released following weighing and off-loading; none were impounded nor forfeited as the instrumentalities employed in furtherance of the defendants' illegal activities. Mr. Font's statement that "... within the last two weeks, the Town of Clarkstown by its police department has stopped many of our trucks on the way into the Carbone facility directing them not to go onto the premises," is also untrue. Since Mr. Glickel's *in camera* agreement that, pending the further modification of the temporary restraining order or the Court's granting of the injunctive relief sought, the TOWN would not continue to divert vehicles from the defendants' premises, no vehicles have been stopped by the Clarkstown Police Department.

7. Prior to the incident of March 8, 1991 involving the spillage on the PIP, it was presumed that the defendants were operating a "recycling facility" (albeit without the requisite special permit). Only following that occurrence and our obtaining a warrant and executing a search of the defendants' premises was the extent of defendants' illegal activities revealed.³ Angelo Carbone states in his affidavit to this Court that C&A Carbone "processes and ships" over 150 tons of waste weekly. According to the defendants' shipping logs a total of 970 tons of "municipal solid waste" was transported from the defendants' premises during the six-day period beginning February 25 through March 2, 1991! The shipping manifests identify the shippers of the municipal solid waste as "C&A Carbone" and "R.P.R." destined for out-of-state landfills.⁴

³ Within twelve (12) hours of the search of defendants' premises, deponent received a subpoena duces tecum from the United States Attorney for the Southern District of New York directing the delivery of all of the seized documents to a special agent of the FBI for transmission to a federal grand jury.

⁴ "R.P.R." presumably identifies the defendant Recycling Products of Rockland, Inc. which, to the best of your deponent's knowledge and belief, is neither a licensee nor a permittee of either the DEC or the TOWN.

8. As someone who by necessity became intimately familiar with the contents of those loads originating from defendants' premises which were diverted and eventually off-loaded at the TOWN's solid waste facility, deponent would describe said contents as "garbage," plain and simple. Deponent wouldn't know if, prior to baling and loading, defendants' garbage was sifted, shaken, or picked over for the removal of any purported recyclable; however, deponent can report to the Court that there was found within these loads tires mounted on steel rims, truck springs, unmounted tires, automobile fenders and exhaust systems, putrescible household waste including vegetable and animal matter and other foodstuffs, disposable baby diapers, bathroom tissue, surgical gloves and intravenous feeding bags.⁵

9. Defendants allege within their federal court complaint (which they have annexed to their papers in opposition to the present application as exhibit "A") that deponent and Det. Lt. Kubran "directed" the off-loading of the ill-fated trailer load of garbage onto trucks owned by the defendant(s). In reality, several individuals were already hard at work upon our arrival at the scene of this accident, frantically attempting to remove the garbage from the scene before the origin of same could be discovered by law enforcement personnel. A number of these workers identified themselves as employees of Northeastern Recycling Co. of 77 Brookside Place, Hillsdale, New Jersey. Northeastern Recycling, upon information and belief, is neither owned nor operated by the Carbones but, rather, is owned by the Franco family. In fact, Carmine Franco, one of the Northeastern partners, appeared at the PIP accident scene and identified himself to NYS Trooper Michael Utzig and an individual identifying himself as Angelo Franco was also at the scene. Members of

⁵ According to the DEC's definition: "Recyclable" means solid waste that exhibits the potential to be used repeatedly in place of a virgin material (6 NYCRR § 360-1.2[b][120]).

the Franco family appeared at the TOWN's transfer station at Route 303 in West Nyack, New York when trucks had been diverted to that facility for weighing and off-loading. Post-accident surveillance of the defendants' premises revealed the delivery of waste to that location by trucks registered to Anchor Carting Co. of Weehawken, New Jersey, another Franco entity. It is obvious to your deponent that the Francos are also involved in the illegal enterprise being conducted at defendants' premises and that they and their corporate alter-egos or partnerships are the "John Doe" defendants herein.

10. Further evidence of the involvement of the Franco family in the defendants' business was the presence of one James Ribaudo at the premises at the time that your deponent and other members of the Clarkstown Police Department executed the aforementioned warrant. Mr. Ribaudo is a long-time Franco employee and president of Sal-Car Transfer Systems, Inc. of Hillsdale, New Jersey, a transfer station owned and operated by the Francos. According to Bergen County authorities Sal-Car has admitted to violating New Jersey State Waste Flow Regulations by accepting trash that is supposed to go to the Bergen transfer station. It is estimated that Sal-Car deprives the Bergen County Authority of roughly 100,000 tons of trash annually! In July, 1986 Salvatore Franco was barred from New Jersey's garbage industry for attempting to circumvent that state's Board of Public Utilities' Regulations. In April, 1987 Carmine Franco was barred from the New Jersey garbage industry for conspiring to restrain free trade within the industry.⁶ According to Salvatore Franco, neither brother is in the garbage

⁶ On September 4, 1987, New Jersey's Board of Public Utilities upheld the April, 1987 Administrative Law Judge's ruling to revoke Carmine Franco's certificate of public convenience and necessity and to bar Franco from further participation in the solid waste collection and disposal industries. Franco and his company each were assessed penalties of \$1.1 million as a result of their anti-competitive activities.

business, "We're in the recycling business now"? It therefore comes as no surprise that the defendants have been operating an illegal transfer station and will continue to do so until enjoined by court order.

11. The defendant Recycling Products of Rockland, Inc., is the embodiment of the Franco-Carbone alliance. In a corporate disclosure form submitted to the TOWN in furtherance of Bid No. 77-89, the ownership of that incorporation was identified as follows: "Salvatore Franco—50%; Angelo Carbone—25%; Carmine Carbone—25%." Upon information and belief, Recycling Products of Rockland, Inc., is neither a licensee nor a permittee of the New York State Department of Environmental Conservation, the TOWN or any other agency or department involving the regulation of the collection, separation, processing, packaging, sale or transport of solid waste, recyclable materials, or the residue thereof.

WHEREFORE, deponent respectfully requests an order of this Court granting summary judgment permanently enjoining and restraining the defendants from maintaining and operating an illegal transfer station in violation of the Clarkstown Town Code and Local Law No. 9 of 1990 and directing that the defendants immediately cease all illegal business operations at 183 Western Highway, West Nyack, New York or, in the alternative, granting plaintiff's application for an injunction *pendente lite*, and for such other and further relief as to the Court may seem just and proper.

/s/ Paul J. D'Alessandro
PAUL J. D'ALESSANDRO

[Notary Omitted in Printing]

⁷ So reported The Hudson Dispatch on Monday, December 4, 1989, "Trash king still rides high despite probes". According to Carol Ash, the regional director of the State of New York's Environment Office in New York City, "Suddenly, everyone wants to call themselves recyclers", *Mob Looks at Recycling and Sees Green*, The New York Times, Wednesday, November 28, 1990.

Affidavit of Murray N. Jacobson, Sworn to April 19, 1991,
for Plaintiff, in Further Support of Application [120-134]

SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

[Title Omitted in Printing]

AFFIDAVIT

STATE OF NEW YORK)

ss.:

COUNTY OF ROCKLAND)

MURRAY N. JACOBSON, being duly sworn, deposes and says:

1. He is the duly appointed Town Attorney for the Town of Clarkstown and he respectfully makes and submits this affidavit in support of the TOWN's application for an order granting summary judgment enjoining and restraining the defendants from their continued operation of a transfer station in violation of the Clarkstown Town Code and the local laws and ordinances of the Town of Clarkstown and in reply to defendants' opposition thereto.

2. From the outset, it must be noted that the TOWN's zoning ordinance does not permit the construction and/or maintenance of a transfer station anywhere within the TOWN. As deponent has previously stated in his affidavit of March 18, 1991, the only lawfully permitted transfer station within the Town of Clarkstown is the TOWN's facility located on Route 303 in West Nyack, New York.

3. Defendants are well aware of the foregoing and do not contest this fact. In his public comments to the

Clarkstown Town Board at a hearing on the defendant CARBONE's application for a special permit to operate a "recycling facility," Kenneth H. Resnik stated, on November 14, 1989, that his client "... neither intended nor wanted a transfer station and that same is not permitted under the TOWN's zoning ordinance."¹ (A copy of the minutes of the public hearing are annexed hereto and made a part hereof as exhibit "E").

4. As recently as last month the defendants continued to deny any involvement in the operation of an illegal transfer station, restating that it was their desire to operate and maintain a "recycling facility or center"; however, since the commencement of this litigation, the defendants have abandoned that masquerade and now identify themselves as interstate transporters of solid waste engaged in direct competition with the TOWN's transfer station.²

5. The permit issued to defendant CARBONE on or about July 17, 1987 is for the operation of a "solid waste transfer station." Two (2) weeks ago, the TOWN's

¹ As defined by DEC regulations, "*Transfer station* means a solid waste management facility, other than a recyclables handling and recovery facility exclusively handling non-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility" (6 NYCRR § 360-1.2[b][157]).

As amended May 23, 1989, Chapter 106 of the Clarkstown Code defines "*Transfer Station*—An area of land upon which is located, permanently or temporarily, structures, machinery and/or other devices where any solid waste, refuse, leaves, trash, trees or soil is taken from a collection vehicle and placed either upon the land, into any other transportation unit or into any other device for future movement to another location" (Clarkstown Code § 106-3).

² See paragraphs "4", "12", "24", "43" and "47" as contained in the defendants' federal complaint filed in the United States District Court (SDNY) on March 27, 1991, annexed to defendants' opposing papers as exhibit "A".

supervisor was advised in writing by New York State's Department of Environmental Conservation that the DEC considers the defendant's facility "... to be primarily a transfer station and not a Materials Recovery Facility (MRF)." In that same correspondence, the DEC's regional engineer expressed that the defendants' tactic of describing transported, baled garbage as "recyclables" is "contrary to the Department's rules and regulations." And in a separate correspondence dated April 5, 1991 the defendants were notified by the DEC's regional permit administrator that "... baled garbage bound for incineration is not considered to be a recyclable material. . . ." (Copies of the permit no. 4429 and correspondence dated April 2, 1991 and April 5, 1991 are annexed hereto and made a part hereof and marked as exhibits "F," "G" and "H," respectively).

6. The defendants seek to challenge the validity of the TOWN's Local Law No. 9 of 1990, but they have failed to raise any objection to the TOWN's zoning ordinance. It is respectfully submitted that this Court need look no further than defendants' operation of a transfer station in violation of the TOWN's zoning ordinance in granting the requested permanent injunction (*Incorporated Vil. of Freeport v. Jefferson Indoor Marina, Inc.*, 162 AD2d 434, [2d Dept., June, 1990]). There is no question but that a local government may ban commercial solid waste transfer stations from its territorial limits (*Town of La-Grange v. Giovenetti Enterprises*, 123 AD2d 688, 507 NYS2d 54, 55; *Town of Islip v. Zalak*, [A.D. 2 Dept.], N.Y.L.J., Tuesday, 2/26/91, p. 21, 1991 WL 18606) and designate the town's transfer station as the sole facility for delivery of all solid waste (*Vinnie Montes Waste System, Inc. v. Town of Oyster Bay*, [A.T. 9th J.D.], 1991 WL 30383).

7. Given the heretofore constant posture of the defendants that they were not operating a transfer station, their general challenge to the constitutionality of the

"other chapters" of the Clarkstown Town Code cannot pertain to the TOWN's zoning ordinance (*Moran v. Village of Philmont*, 147 AD2d 230, 542 NYS2d 873) which enjoys a strong presumption of constitutionality (see, *de St. Aubin v. Flacke*, 68 NY2d 66, 76, 505 NYS2d 859, 496 NE2d 879). Nor can it be said that Chapter 106 of the Town Code represents an abuse or the improper exercise of the TOWN's police power (*Town of Islip v. Zalak*, *supra*; *Al Turi Landfill, Inc. v. Town of Goshen*, 556 F Supp 231 [1982]).

8. Should the Court feel that it is necessary to look beyond the enforcement of the TOWN's zoning ordinance and scrutinize the implementation of the TOWN's Local Law No. 9 of 1990, the defendants must again fail.

9. The defendants have alleged in their amended answer as a "third affirmative defense and first counterclaim" a lack of compliance with Article 8 of the Environmental Conservation Law (SEQRA). A review of the opposing papers including the defendants' District Court pleading establishes that the defendants are not aggrieved by the adoption of Local Law No. 9 of 1990 in a manner which would qualify them for standing to raise a SEQRA challenge. In this regard, the defendants must demonstrate that they will suffer an injury that is environmental and not solely economic in nature (*Mobil Oil v. Syracuse Indus. Dev. Agency*, 76 NY2d 428, 559 NYS2d 974; *Greenwich Comm. v. Warren*, 164 AD2d 469, [3d Dept., December 27, 1990]). The defendants have not identified any non-economic, environmental damage to their premises at 183 Western Highway, West Nyack, New York.

10. The opposition is replete with the "buzz-words" of modern environmental law and premised upon counsel's supposition that plaintiff must have missed a turn in the labyrinth of statutory and procedural requirements housed within the Environmental Conservation Law, the applicable regulations of the Department of Environ-

mental Conservation and such other sections and enacting provisions of the "Solid Waste Management Act of 1988" (L.1988, c.70; 6 NYCRR Part 360). But how can the defendants overcome³ the properly issued permit of the DEC for the operation of a solid waste transfer station at the TOWN's former landfill site?⁴

11. The genesis of the TOWN's transfer station can be traced to the TOWN's sanitary landfill which facility was in operation on August 28, 1977,⁵ the effective date of Part 360 of 6 NYCRR. Pursuant to that statute, the TOWN was required to submit an application for a permit to operate an existing solid waste management facility within six (6) months of the effective date of Part 360. Such application was submitted and re-submitted and ultimately denied, which resulted in the entry of an "Order on Consent" dated May 16, 1980. That order permitted the operation of the TOWN's sanitary landfill through March 1, 1983 and imposed various conditions upon the use of the facility.⁶

³ Presuming that the defendants are possessed of the requisite standing to mount a SEQRA challenge in the first instance.

⁴ DEC permit no. 3-3920-166/1-0 issued 12/31/90 makes the following reference to SEQRA: "STATE ENVIRONMENTAL QUALITY REVIEW ACT under the State Environmental Quality Review Act (SEQRA), the project associated with this Permit is classified as an unlisted action with the Town Board, Town of Clarkstown designated as the lead agency. It has been determined that the project will not have a significant effect on the environment" (a copy of the permit under the Environmental Conservation Law is annexed hereto and marked exhibit "I").

⁵ The landfill started as the town "dump" at or near the same location in approximately 1950.

⁶ One such condition required the TOWN to inform the DEC by October 1, 1980, whether the TOWN would participate in the "county-wide solid waste disposal system" (hereinafter known as the "Regional Plan"), outlined in the Rockland County Solid Waste Study. To date, Rockland County has yet to implement a "regional plan".

12. The Clarkstown Sanitary Landfill continued to operate through 1983 and thereafter a "Modified Order on Consent" was entered on August 6, 1984, under which the sanitary landfill remained open. A "Final Order on Consent" providing for the closure and remediation of the sanitary landfill site was entered on August 7, 1989. The stated goal of that order was "the development and implementation of a remedial program for the site, which program shall include a remedial investigation/feasibility study and the design and implementation of the selected remedial alternative." (Copies of the orders are annexed hereto as exhibit "J," "K" and "L," respectively).

13. Thus confronted with the closure of its sanitary landfill, the TOWN was required to construct and operate a solid waste transfer station,⁷ ideally to be located at the landfill site. A full Environmental Assessment Form (EAF) was prepared on behalf of the TOWN by its consultants Velzy Associates and, following public hearing the Town Board adopted the resolutions declaring a negative declaration with respect to the proposed construction and operation of a solid waste transfer station at the existing Clarkstown sanitary landfill site and adopting the TOWN's Local Law No. 9 of 1990 entitled "Solid Waste Transportation and Disposal." (Copies of the EAF and "declaration of no impact" are annexed hereto and made a part hereof and marked exhibits "M" and "N," respectively).

14. The sanitary landfill remained open through December 31, 1990 and the TOWN's transfer station became operational on January 2, 1991. The following is a brief chronology of the various steps leading to the construction and implementation of the TOWN's facility:

- a. The Consent Order was signed by the TOWN on June 30, 1989 and by the DEC on August 7, 1989;

⁷ The DEC's order dated August 7, 1989 specifically anticipated the "completion of the proposed transfer station" (§ XX, 2).

- b. The TOWN had completed SEORA proceedings concerning the transfer station site on June 19, 1989;
- c. On June 29, 1989, a letter was received from the DEC, Region 3 requesting certain information on the siting of the station;
- d. On August 8, 1989, the Town Board commenced the request for proposals procedure, pursuant to General Municipal Law (GML) § 120-w for the design, construction, operation and maintenance of a solid waste transfer station to be located on Route 303, West Nyack, New York, together with transportation of the solid waste delivered to the transfer station to an approved landfill for final disposal;
- e. Notices concerning the Request for Proposals were published commencing August 11, 1989;
- f. The 60-day public comment period on the Request for Proposals ended October 10, 1989, and the subsequent ten-day period ended October 20, 1989, all as required by GML § 120-w;
- g. The request for proposals was published commencing October 25, 1989, to be returnable November 24, 1989;
- h. The transfer station site study prepared by Velzy-Weston was completed November 10, 1989 and forwarded to DEC for comments. This study contained tests, borings, etc., done on the site since June 29, 1989 as requested by the DEC;
- i. Pre-proposal conferences were held with interested parties on November 2, 1989 and November 13, 1989;
- j. On November 24, 1989, eleven (11) proposals for the transfer station were received by the TOWN;

- k. Interviews were held with ten (10) of the proposers during subsequent weeks;
- l. On December 29, 1989, the Town Board selected Clarkstown Recycling Center, Inc., as the proposer to whom the project would be awarded;
- m. Inasmuch as Clarkstown Recycling Center, Inc. was not the lowest proposer, a public hearing was held on January 16, 1990 as required by GML § 120-w;
- n. On January 2, 1990, the contract was awarded to Clarkstown Recycling Center, Inc. and findings were made by the Town Board as required by statute;
- o. Meetings were held with the DEC on January 17, 1990 and January 25, 1990, at which time the site study of Velzy-Weston was orally approved;
- p. Final plans for station site were prepared and submitted with formal applications on March 2, 1990 seeking a permit from the DEC;
- q. The DEC issued a permit to Clarkstown Recycling Center, Inc., on May 1, 1990, which authorized Clarkstown Recycling Center, Inc. to construct a solid waste transfer station at the Clarkstown Sanitary Landfill site;
- r. On May 18, 1990, the TOWN and Clarkstown Recycling Center, Inc. entered into their agreement providing for the construction and operation of a transfer station at the Clarkstown Sanitary Landfill and the transportation to and disposal at permitted landfills outside of New York State;
- s. Thereafter, the TOWN commenced and completed the remediation of the transfer station site of approximately 7.5 acres and construction of

the transfer station began in the fall of 1990 and was completed by years end.

The TOWN looked very closely, indeed, at the potential environmental effects of its transfer station prior to undertaking the construction and operation of same.

15. In community recycling, Clarkstown stands among the leaders of Rockland County's municipalities. In 1988 the TOWN implemented its voluntary residential recycling program which was supplanted in 1989 by the TOWN's mandatory recycling program.⁸ In 1988 the TOWN received permission of the state comptroller for the establishment of its refuse and garbage district and by contractual agreement with the Town of Orangetown dated August 22, 1990,⁹ all acceptable solid waste generated or brought into those communities now flows through the

⁸ The TOWN's voluntary recycling program predates the adoption of the Solid Waste Management Act of 1988. The legislative findings, L. 1988, c.70, § 1, underscored the need to reduce the generation of waste, encourage the recovery and reuse of secondary materials through recycling and related techniques, and foster conservation. Section 2 of L. 1988, c.70, provides: "The Legislature finds and declares that the proper management of solid waste is necessary to protect public health and the environment. Toward this end, it is necessary to reduce the generation of solid waste, to accelerate the recovery and reuse of secondary materials within the state, to encourage the conservation of resources . . . and to encourage a new ethic among New York's citizens to conserve and reuse, rather than discard, useful materials. A state-local partnership is essential to achieving these ends". On September 19, 1989, the TOWN adopted Local Law No. 5 of 1989, now Chapter 82 of the Clarkstown Code entitled, "Recycling", wherein the TOWN implemented a mandatory recycling program (see the affidavit of Charles E. Holbrook, sworn to on March 18, 1991, submitted in support of the TOWN's application for a preliminary injunction).

⁹ Clarkstown's sanitary landfill had been an integral part of neighboring Orangetown's solid waste disposal system for many years prior to closure (see "Order on Consent" dated May 16, 1980); logically, Orangetown elected to continue this relationship in requiring that all acceptable solid waste generated within Orangetown be transported and delivered to Clarkstown's transfer station.

TOWN's transfer station for baling and loading for transport to out-of-state burial sites. (Copies of Velzy Associates' "Plan and Report for the Establishment of the Town's Garbage and Refuse District" and the Department of Audit & Control's permit dated August 26, 1988 are annexed hereto as exhibits "O" and "P", respectively).

16. The TOWN also maintains two (2) composting sites where leaves and grass clippings are accepted for compost to eventually be returned to the soil as mulch and organic fertilizer.

17. Clearly, any argument to the effect that the TOWN neglected to take the requisite "hard look" at the environmental factors relating to the construction and maintenance of its solid waste transfer station and the concomitant transition of its solid waste management facility from a sanitary landfill to a transfer station, is erroneous.

18. In the adoption of its local law regulating the disposal of acceptable waste at the TOWN's transfer station, the Town Board specifically considered the facility's receipt of a permit from DEC and the procedures attendant to the issuance of such permit and that the action was considered to be an "unlisted action without any significant impact upon the environment" obviating any further processing pursuant to the State Environmental Quality Review Act (a copy of the resolution setting a public hearing pursuant to Section 20 of the Municipal Home Rule Law, dated December 18, 1990, is annexed hereto and marked exhibit "Q").

19. While it is beyond dispute that legislative actions are within the purview of SEQRA (*Niagara Recycling, Inc. v. Town Bd. of Niagara*, 83 AD2d 335, 443 NYS2d 951, 954), it is respectfully submitted that the Town Board's determination of non-significance in its adoption of Local Law No. 9 of 1990 entitled "Solid Waste Transportation and Disposal", should not be set aside. There is nothing in this record to suggest that the TOWN did not give the required "hard look" or that a longer or

more detailed study of the proposed local law was in any way warranted (*Niagara Recycling, Inc. v. Town Bd. of Niagara, supra*, at 955). The adoption of Local Law No. 9 of 1990 cannot be viewed as an isolated action by the TOWN as it constitutes just one element of the TOWN's integrated transition of its solid waste management facility from landfill to transfer station (*Vinnie Montes Waste System, Inc. v. Town of Oyster Bay*, [A.T. 9th J.D.], 1991 WL 30383).

20. Deponent must again stress that the defendants lack standing to challenge the adequacy of the TOWN's review of the entire project and that, in any event, the Court need look no further than the defendants' obvious (if not, in fact, admitted) violation of Chapter 106 of the Clarkstown Code prohibiting defendants' operation of a transfer station anywhere within the TOWN.

21. Neither the TOWN's zoning ordinance (*City of Columbia v. Omni Outdoor Advertising-Co., Inc.*, — S.Ct. —, 1991 WL 41544 [April 1, 1991];), nor Local Law No. 9 of 1990 (*Town of Hallie v. City of Eau Claire*, 105 S.Ct. 1713, 471 U.S. 34, 85 L.Ed.2d 24 [1985]) run afoul of the anti-trust laws.¹⁰

22. As regards defendants' "second affirmative defense" averring the facial invalidity of Local Law No. 9 of 1990 and "other chapters of the Clarkstown Town Code", deponent can only assume that defendants allude to Article I, § 8 of the Constitution of the United States (the Commerce Clause). The TOWN's zoning ordinance enjoys a strong presumption of constitutionality (*de St. Aubin v. Flacke*, 68 NY2d 66, 76, 505 NYS2d 859, 496 NE2d 879; *Moran v. Village of Philmont*, 147 AD2d 230, 542 NYS2d 873, 875) and does not impose an undue burden upon interstate commerce (*Town of La-Grange v. Giovenetti Enterprises*, 123 AD2d 688, 507 NYS2d 54, 55; *Monroe-Livingston v. Town of Cale-*

¹⁰ Presumably, this is what the defendants are asserting by their "first affirmative defense".

donia, 51 NY2d 687, 435 NYS2d 966, 968; *Al Turi Landfill, Inc. v. Town of Goshen*, 556 F Supp 231, 238). Local Law No. 9 of 1990 regulates evenhandedly, without regard to origin, in its treatment of acceptable solid waste. In its application it does not look in a discriminatory or disparate fashion at acceptable solid waste generated within the territorial limits of the TOWN as opposed to acceptable solid waste generated or collected *outside* the territorial limits of the TOWN or, for that matter, outside of the State. Subdivision "C" of Section 3 requires the transportation and delivery of all acceptable waste generated *within* the TOWN to the TOWN's transfer station; Subdivision "A" of Section 5 calls for the disposal of acceptable waste generated or collected *outside* of the territorial limits of the TOWN at a "Town operated facility", *i.e.*, the TOWN's transfer station.¹¹ There can

¹¹ Subdivisions "C" and "D" of § 3 of Local Law No. 9 of 1990 entitled, "Collection and Disposal of Acceptable Waste", state:

"C. All acceptable waste generated within the territorial limits of the Town of Clarkstown is to be transported and delivered to the Town of Clarkstown solid waste facility located at Route 303, West Nyack, New York or to such other disposal or recycling facilities operated by the Town of Clarkstown, or to recycling centers established by special permit pursuant to Chapter 106 of the Clarkstown Town Code, except for recyclable materials which are separated from solid waste at the point of origin or generation of such solid waste, which separated recyclable materials may be transported and delivered to facilities within the Town as aforesaid or to sites outside the Town. As to acceptable waste brought to said recycling facilities, the unrecycled residue shall be disposed of at a solid waste facility operated by the Town of Clarkstown.

D. It shall be unlawful to dispose of any acceptable waste generated or collected within the Town at any location other than the facilities or sites set forth in Paragraph "C" above".

Subdivision "A" of § 5 of Local Law No. 9 of 1990, states:

"A. It shall be unlawful, within the Town, to dispose of or attempt to dispose of acceptable or unacceptable waste of any kind generated or collected outside the territorial limits of the Town of Clarkstown, *except for acceptable waste disposed of at a Town*

be, therefore, no claim that the law is invalid on its face (*Niagara Recycling, Inc. v. Town Bd. of Niagara*, 83 AD2d 316, 443 NYS2d 939, 949, 950; *Al Turi Landfill, Inc. v. Town of Goshen*, *supra*, at 238; *Monroe-Livingston v. Town of Caledonia*, *supra*, at 968).

23. Local Law No. 9 does not conflict with the provisions of ECL Article 27 nor has the State preempted the regulation of solid waste management. Indeed, the ECL has expressly included local government in the regulation of problems endemic to waste management (ECL § 27-0711; *see Jancyn Mfg. Corp. v. Suffolk County*, 71 NY2d 98, 524 NYS2d 8, 10-12; *Al Turi Landfill, Inc. v. Town of Goshen*, *supra*, p.239; *Monroe-Livingston v. Town of Caledonia*, *supra*, at 968).

24. The TOWN unquestionably has the power to regulate the operation and location of transfer stations located within its territorial jurisdiction (*Town of Islip v. Zalak*, [A.D. 2 Dept.], 1991 WL 18606) and in today's society it can hardly be doubted that municipalities may regulate the disposal of refuse materials (*Town of Islip v. Zalak*, *supra*). The enactment of the applicable laws and ordinances (here questioned by the defendants) represents a reasonable exercise of the TOWN's authority to protect the health, safety and well-being of its citizens and the environment through the exercise of its police power (*Al Turi Landfill, Inc. v. Town of Goshen*, 556 F Supp 231, 239; *Moran v. Village of Philmont*, 542 NYS2d 873, 875, citing, *Matter of Town of Islip v. Caviglia*, 73 NY2d 544, 550-51, 542 NYS2d 139, 540 NE2d 215; *Town of LaGrange v. Giovenetti Enters.*, 123 AD2d 688, 689, 507 NYS2d 54).

operated facility, pursuant to agreement with the Town of Clarkstown and recyclables, as defined in Chapter 82 of the Clarkstown Town Code, brought to a recycling center established by special permit pursuant to Chapter 106 of the Clarkstown Town Code".

25. In light of the fact that the defendants are, daily, violating the ordinances and laws of the Town of Clarkstown, deponent respectfully requests an order granting summary judgment insofar as the TOWN requests a permanent injunction and directing that the defendants immediately cease and desist such violations and specifically prohibiting the defendants operation of a transfer station at their premises at 183 Western Highway, West Nyack, New York and the continued circumvention of the TOWN's transfer station facility.

WHEREFORE, deponent respectfully requests an order of this Court granting summary judgement permanently enjoining and restraining the defendants from maintaining an illegal transfer station in violation of Chapter 106 of the Clarkstown Code and the illegal transportation and disposal of solid waste generated within and without the territorial limits of the Town of Clarkstown in accordance with Local Law No. 9 of 1990 and directing that defendants immediately cease all illegal business operations at 183 Western Highway, West Nyack, New York or, in the alternative, granting plaintiff's application for a preliminary injunction, and for such other and further relief as to this Court may seem just and proper.

/s/ Murray N. Jacobson
MURRAY N. JACOBSON

[Notary Omitted in Printing]

**Exhibit E to Affidavits Submitted in Support of Plaintiff's
Application—Minutes of Public Hearing [142-159]**

**TOWN OF CLARKSTOWN
PUBLIC HEARING**

Town Hall 11/14/89 10:00 P.M.

Present: Supervisor Holbrook
 Council Members Carey, Kunis, Maloney and
 Smith
 Murray N. Jacobson, Town Attorney
 Patricia Sheridan, Town Clerk

RE: SPECIAL PERMIT TO OPERATE RECY-
CLING FACILITY MAP 80, BLOCK A, LOT
15 (C & A CARBONE)

On motion of Councilman Carey, seconded by Council-
man Maloney and unanimously adopted, the Public Hear-
ing was declared open. Town Clerk read notice calling
Public Hearing and testified as to proper posting and
publication.

Town Attorney read the following recommendations of
the Clarkstown Planning Board:

- 1) Provide gratuitous widening of Western High-
way, 30 feet from the center line of the road, and
provide deed, title report and map with metes and
bounds description for T.A. review and approval.
- 2) Subject to all requirements of Dept. of E.C. and
subject to all requirements of the Rockland County
Highway Department, since Western Highway is a
County road.

Town Attorney said the DEC reported no environ-
mental impact.

The County Planning Board approved subject to con-
ditions:

1. The recommendations of the Rockland County
Highway Department letter of July 5, 1989.
2. The recommendations of the Soil and Water Con-
servation District letter of June 30, 1989.
3. Obtaining all required permits from the Rockland
County Drainage Agency.
4. Obtaining all required permits from the Rock-
land County Health Department.
5. Guarantee that noise and odors do not adversely
affect the nearby residential areas.
6. A traffic study be done to determine the volume
and flow of traffic coming from this site. The study
must take into consideration that there is a ban on
truck traffic going into Orangetown.

Town Attorney read recommendations of the Rockland
County Highway Department:

1. Provide adequate means of preventing dirt, dust
and mud from being tracked onto Western Highway
by vehicles leaving the site.
2. As the plans are developed, they are provided to
this Department for review and comment.
3. A permit from this Department is acquired by
the owners prior to the start of any construction on
the site.

Town Attorney read recommendation of Rockland
County Drainage Agency:

The above referenced parcel is within the 100
L.F. of 100 year flood plain of the Hackensack
River. Therefore a permit from this agency is
required.

Town Attorney read recommendations of the Rock-
land County Soil & Water Conservations District Board:

The dominate soil on the site is Riverhead, a very deep well drained sandy loam. Because this soil is highly permeable, the town should satisfy itself that materials stored on the site are not allowed to leach into the soil. This soil should be considered to be a poor filter so the potential for ground water contamination has to be addressed in the planning and design for this proposed site.

Town Attorney read comments from the Town Department of Environmental Conservation:

1. The entranceway to the site and the exitway from the scale area should be paved to prevent dust coming onto Western Highway.
2. If the berm along Western Highway is to remain permanent, we recommend planting evergreens.
3. The proposed retaining wall should be designed, inspected during construction and certified that it has been constructed according to the design by the registered N.Y.S. Professional Engineer.

Supervisor said the applicant will make a presentation. The Board members can ask questions of the applicant. Then any and all questions and comments from the audience will be heard.

Appearance: Kenneth Resnick, Esq.
Granik, Garson, et al
representing C & A Carbone

Mr. Resnick said the Board has in front of it the petition, the recommendations of the Planning Board and the various boards and agencies of the county. He said he wanted to address some of the immediate concerns. He said his clients intention as soon as the permit is granted, if the Board is so inclined, to immediately file with the Planning Board an application to totally enclose the facility so that it will at all times be free from any noise, dust and any odor. There will be no possibility of any

leaching or leachate simply because it will be all concrete floor. The present application is based upon the map as it is submitted in front of you but we have every hope and intention to developing a facility here for recycling in the method and manner which we are now utilizing but to be wholly enclosed. He said other than that he would rest upon the record that has been previously submitted to the Board.

Supervisor asked if the Board members had any questions.

Councilman Kunis asked how does totally enclosing stop odors? Mr. Resnick said it is an interesting phenomena that when you take material and deodorize it you stop the odor and if you keep it contained and provide deodorizers there is no smell. He said he could invite the Board to a couple of places that he is aware of that use those materials where it is effective. One is in Hillsdale and one is in Ramapo.

Supervisor said in regard to this facility you are talking about a recycling facility. Mr. Resnick said this is only recycling. This is not a transfer station. It is not permitted by the zoning law and it is not his client's intention to want a transfer station. Councilman Kunis said the property currently holds a permit for a transfer station from the State Department of Environmental Control, is that correct? Mr. Resnick said that was correct. He said he thinks you will find in that connection that that is the type of permit that comes out of Section 306 under the rules. That is essentially the permit.

Councilwoman Smith said are you saying that you have to have that permit to have a recycling permit? Mr. Resnick said no he is not but that is the permit that the DEC issued. He said his client applied for that back in 1987 but it wasn't issued until 1988. The limitations that existed between the zoning law and the application at the time were different. They were both the same.

While it talks about a transfer permit and all of the conditions under a transfer station would still be applicable—no odor, leachate, no effluent, none of that kind of stuff. The site itself is only for a recycling center and that is the methodology of the Department of Environmental Conservation.

Councilman Kunis asked what is the possibility of entering that site from east to west and not using Western Highway? Mr. Resnick said at this point it has not escaped our attention. He said we know who the adjoining owner is—Mr. Magee. He said that his client has effected conversations with him. They have gone nowhere at this point. There is a very long stretch of road that would have to be built—3,000+ feet and not an inexpensive road. We have not done any soil tests or anything like that but that is not liable to be compacted soil. It is liable to be mud and that would make it a very expensive road as well. There may be other alternatives rather than a straight line. He said he is not in a position today to represent to you anything with respect to the future in that other than it has not been lost upon his client and that there are and hopefully will be conversations that will go on.

Supervisor said in regard to the facility itself the concern about the traffic, aside from the odors, etc. has to be addressed. Regardless of whether this was built there or not the Board is concerned about that because Clarkstown is impacted by a ban and everything else. We have to attempt, between the Towns of Orangetown and Clarkstown, to resolve that problem with the truck traffic regardless of what is here. Mr. Resnick said on Western Highway, Route 303 and this whole package we may be able to facilitate that. He said he would point out one advantage that this site does have it is his guess that the availability of trucks to remove garbage from municipalities to distant landfill sites is going to be scarcer and more scarce. One of the current methods which is used now and it is nationwide is that truckers as almost a round

robbin—they go from one stop to another stop to another stop and somewhere in between those several stops, some of which may carry things we don't want to be in a truck that also carries garbage, to take material to landfill sites.

Mr. Resnick stated that we have a rail siding on that site. We believe that within three years costs of rail transportation vis a vis truck transportation will make rail competitive. Not because rail is going to get cheaper but because trucking is just going to get that much more expensive. That would eliminate probably close to a third of the truck motions that come about during the course of a day because that affords us an ability to transport substantial quantities by rail.

Councilwoman Smith said we must be made fully aware of whatever alternative plans you may have for traffic, other than Western Highway. Mr. Resnick said right now we have no direct access. We are limiting some of our truck movements by the sufferance of Mr. Magee. He allows us to utilize some of his property at different times and in different ways and allows us to go from Route 303 and limit our use on Western Highway. He said we have every intention of continuing but right now that is at the sufferance of Mr. Magee. It is not by contract and he said it is his hope that within the next short period of time perhaps that can be formalized but he cannot be put into a position to guarantee something like that. It is simply not something that he could guarantee.

Supervisor asked if there were any other questions from the Board. There were none. Supervisor asked if any member of the public wished to ask a question or make a comment?

Appearance: Mr. Stanley Hirsch
Western Highway
West Nyack, New York

Mr. Hirsch said he was in possession of a letter from Mr. Resnick to Mr. Bollman which say: "recognizing the circumstances regarding the landfill, as newspapers have reported it my client is in a position to offer the proposed facility as a transfer station to the Town." He asked Mr. Resnick if he wrote that letter and Mr. Resnick said absolutely.

Mr. Hirsch said Carbone has in his possession a permit to operate as a transfer station. He was surprised that Mr. Resnick did not try to deny that. He said he wanted to reiterate some of the points that the Town Attorney made before. He has a copy from the Rockland County Soil and Water Conservation District Board saying "There is a potential for groundwater contamination." They also require a traffic study to see the volume and flow, noise and odors—this is what you said Mr. Jacobson. That study has not been done, has it? Mr. Jacobson said he was not aware of it. Supervisor said it has not been done.

Supervisor said before any decision would be made a traffic study would have to be done. These are conditions. Mr. Hirsch said good, he wanted to understand that. He said discussion was had regarding tremendous truck traffic that we have on Western Highway so he knew that the study would not change anybody's mind on that. We have a lot of 18 wheelers going down Western Highway which is a residential area. We have the Carbone trucks handling recycling on Western Highway. They are very noisy trucks. He asked Supervisor Holbrook if the Journal News had lied the other day when it said that he (Supv. Holbrook) was offering Nyack the use of the Carbone facility for recycling? Supervisor said he did not see that. Mr. Hirsch asked the Supervisor if he had said that. Supervisor said part of the Village of Nyack is in the Town of Clarkstown so they would be part of our recycling and part is in Orangetown so they are part of both towns. Mr. Hirsch said Nyack is not currently using the Carbone facility so therefore we would

have an increase in garbage. Supervisor stated that if the Village of Nyack wanted to come with Clarkstown in terms of getting rid of its recyclables, since he favored recycling, he would not be opposed to that. He said he could not say what was quoted in the newspaper. But he definitely would say yes to the Village of Nyack if they wanted to come with Clarkstown. Mr. Hirsch said but you just said there is a tremendous amount of truck traffic on Western Highway. Wouldn't this increase it? Supervisor said he did not know if it would increase it that much. Supervisor said the recycling trucks which pick up in Orangetown and Clarkstown are similar. The Village of Nyack has a problem in how to go about enhancing recycling for pickup. He said if they wanted to come along with the Town of Clarkstown and enhance their recycling he would be in favor of that. We would probably use the same recycling trucks that we are using in Clarkstown because the agencies are the same.

Mr. Hirsch said obviously there would be an increase in truck traffic if they are handling another villages recyclables. Supervisor said obviously there would be some. Mr. Hirsch said he was working out in front of his house the other day and Carbone's trucks were going by every five minutes. Supervisor said the Carter's Association has the recycling trucks that pick up the recyclables, not the Carbone trucks.

Mr. Hirsch said he wanted to reiterate what was stated before. That the Carbone facility is within 100 feet of the Hackensack Creek and he said he believed across the street in the swamp the water there is used by Spring Valley Water Company and we have had trouble in that area before, especially on Pine View with all of the wells being contaminated.

Mr. Hirsch said if you give this permit we are going to have an increase in traffic, an increase in noise pollution, we'll probably have an increase in water pollution and all of this in a residential area. He said when he attended

a workshop several weeks ago a gentleman offered to have a facility in the Snake Hill Road area which is not residential, where they would be able to use Route 303 and it wouldn't disrupt and pollute a residential area. He said he would like a recycling center and put in a transfer station at a later time you said we only want to talk about recycling at this point. Mr. Hirsch said it is fairly obvious from what is coming out here that recycling will lead to a transfer station. Nobody is going into the recycling business because there is no money in it. Supervisor said the only transfer station we are going to construct, and our zoning does not permit it in any zone, is the one that will be constructed at the landfill site. When we had the hearing and established the definitions and then later established the zones, the Town Board made a conscious decision not to include transfer station in any of the zones. That was done consciously. It was considered but it was also then considered to take that out.

Mr. Hirsh said he heard that but he also has the permit from Carbone to operate a transfer station. Supervisor said that was from the New York State Department of Environmental Conservation but you have to remember that at the time that was issued there was no such provision for transfer stations in the Town of Clarkstown. By creating definitions of transfer stations and then specifically not applying to any of the zones, now our zoning ordinance does deal with that particular issue. It was not dealt with at all in our zoning up to that point.

Mr. Hirsch asked the Supervisor to tell the good people of West Nyack why you are so in favor of having a recycling facility on Western Highway and still opposed to have it on Snakehill Road. Supervisor said he is in favor of recycling. Right now we have no place in Rockland County. He is in favor of taking recyclables so that they can be removed and we can expand our recycling for the benefit of not only Clarkstown but all Rockland County residents. We need a place to bring it.

This is a site we are considering. It is not necessarily the only site. The question of traffic which we have raised previous to this is one that he is concerned about. He said he did not think this Board is prepared to make a decision in regard to that. There are also other factors too. We are not prepared to make a decision favorable to this until such time as the traffic situation is resolved and that means trying to get the truck traffic off Western Highway. He stated that he has been saying that for some time and he would reiterate it now. It is a concern regardless of what is constructed at this particular site. If it was a row of stores, we would be talking about the same type of traffic and it has to be worked out between the Towns of Orangetown and Clarkstown.

Mr. Hirsch said you still have not answered my question and he was getting a little tired of asking the same question over and over and having you dance around it. Supervisor said he is not dancing around anything. Supervisor said you are assuming something. He said he favors recycling. If he could eliminate the truck traffic on Western Highway he would be in favor of having a recycling place where we could take Clarkstown's recyclables. If this happens to be a place, he has to consider it. It is not necessarily the only place to be considered.

Appearance: Ms. Florence Zuvich
Blauvelt, New York

Ms. Zuvich asked approximately how big Clarkstown is? Supervisor said it is 42 square miles and 82,000 people. She said out of 42 square miles you have 8 toxic sites in a radius of maybe 3 miles. She asked why out of 42 miles would you even consider adding to the problem we've got. She said you keep trying to say Carbone is only recycling and you keep saying that your transfer station is going to be at the Landfill. Supervisor said that is correct. Ms. Zuvich said she wanted to clarify what she thinks.

Ms. Zuvich said you have stated that they will become probably County facilities eventually. Supervisor said that is correct. Ms. Zuvich said that Mr. Resnick also said that eventually railing it out will be cheaper than trucking it out. Hence, maybe the meeting with the people in Pennsylvania. Ms. Zuvich said if you look at the Carbone site and she did not know how many acres it was but it is not really that large, it cannot possible facilitate a County facility. The site for the so-called transfer station is also not big enough to hold a County facility. You will then have to graduate toward the middle of the map. We also know who owns the property in the middle of that map. The Magee Brothers.

Ms. Zuvich said if you look at the map the rail is directly behind Carbone and not by the proposed transfer station so if you are going to put the transfer station on Route 303 by the Landfill you will still have to truck it or move it in some way to the rail site which has got to be maybe 100 feet or so from Western Highway. Supervisor said our intention from the Town's point of view with regard to the transfer station on Route 303, is to bring the garbage, that is not recycled, to the site and then transport it by truck, not by rail, to a permitted facility which would probably be outside of New York State. This could be Pennsylvania or even Ohio. Ms. Zuvich asked is the rail supposed to be just for recyclables? Supervisor said their specific site was for recyclables. The Town of Clarkstown is not involved in the rail site. Ms. Zuvich said you have listened to that option of railing it. Supervisor said we have but the problem would be crossing the Landfill and the wetlands with a rail spur. He said we would not really be able to do that. Ms. Zuvich said that was her whole point. You would not be really connecting it. That transfer station would have to grow in order to accommodate a County facility. Supervisor said we are not looking to accommodate the County facility. Ms. Zuvich said but you will, eventually.

Supervisor said Orangetown and Clarkstown have been basically wedded together with regard to garbage for a long time, with the Landfill and ultimate with this station. What we are looking to do is to provide a facility at the location of the Landfill which would accommodate both the Towns of Orangetown and Clarkstown at that site. Ms. Zuvich said but did you not say that eventually you would go with the County facility? Supervisor said absolutely and what he envisions the County plan to be is that probably somewhere down the line in the Town of Ramapo there would probably be using their baling station or they would make it into a transfer station which would be another location for Ramapo and probably maybe even Haverstraw to use it as a site if they in fact have to truck garbage out of New York state. Supervisor stated that the Town Board here is not looking to make the facility and we have not applied for it in those terms. We are only applying for the Towns of Orangetown and Clarkstown and there is no intention to do that. Ms. Zuvich said she went to the County meeting on solid waste and the main applicant for the center was Carbone and no other was mentioned. She said also as we know one way of getting around SEQRA is saying that you have an existing facility. So you will have an existing facility there so that when the County wants to come in and expand there is little doubt that DEC will accommodate. Supervisor said one other point—add to that—going down the road and we did ask the question of the DEC at the Landfill site in West Nyack but we were talking about the transfer station. We did raise the possibility of that location having a recycling facility adjacent to the transfer station but in trying to move the application along they told us not to apply for that at that time. Ultimately, the Town of Clarkstown might decide that we want a recycling facility right at the Landfill site for Clarkstown's recyclables. The DEC recommended at the time we talked to them against making that application simultaneously with the one for the transfer station.

Ms. Zuvich said she understood that but also she said you just said about moving it to the Landfill site. She said she sincerely doubted that if Carbone is putting in that amount of money to start it you are not about to pull it away from them. Supervisor said we have said even over at the County, that when the County does come up with their plans ultimately for whatever they are going to do with solid waste which is not really formulated, and may never be formulated in this decade, the Town of Clarkstown is prepared to cooperate with the County of Rockland in whatever endeavors they do but that is not for the foreseeable future. Essentially we are going to construct our transfer station and maybe even try to make a recycling thing there ultimately at that location. Ms. Zuvich said the DEC permit expires in 1992 which is when the County facility is supposed to go on line. Supervisor asked what County facility would that be? Ms. Zuvich said the County's target date is 1992 and it seems curious to her that while you advocate having the County come in that Carbone's DEC permit would be expiring just at that time.

Appearance: Mr. Peter Beaton
Western Highway
West Nyack, New York

He said we have a Supervisor who is highly interested in recycling and Carbone wants to put a recycling plant on Western Highway. It follows that it is logical that we will increase dramatically, again and again, the amount of recyclables that are brought along Western Highway. Is that true? Mr. Resnick said he supposed you could say that. Mr. Beaton asked Mr. Resnick if it was not true that his plan is for the trucking out of stuff that has already been trucked over Western Highway and the railway has little impact on the people who live on Western Highway and their children? Mr. Beaton asked who is pulling the wool over whose eyes here with this recycling plant. If they get this foot in the door and we will have

the transfer station just as we have the stinking stench tonight on the dump that is supposed to be covered. Go by it, tell me how you are going to take care of our problems. The area stinks every day.

Supervisor said with the approval of the Town Board he has signed a Consent Order to close the Clarkstown Landfill and we will be undertaking a rather expensive and lengthy remediation of that site. We are not oblivious to the environmental problems that the Landfill has caused over the years. He said we must consider that the Town Board has taken this measure and this Landfill site will be remediated and there will be relief. He said he was saying this in all sincerity. It is not going to happen ten years from now. It is going to happen starting in 1990. In terms of odors and whatever problems are there we will have to see what has been dumped there over the course of fifty years, etc., that has to be remediated. Knowing where you live and knowing that you have lived with this for a long period of time, the remediation of the Landfill site will, in the long run and in the immediate run, improve the situation there. He said we have done that. Mr. Beaton said you have promised to do it. Supervisor said we have done it. He said he is not saying there isn't odor from the Landfill tonight. But he is saying that with the remediation of the site in 1990 the conditions to which you are referring will be improved. We have consciously attempted to do that. Mr. Beaton said the DEC did that for us. Supervisor said instead of fighting them in the courts and delaying it ad infinitum the Town Board did not choose that option. We chose the option of approving a Consent Order and signing it so that the Town of Clarkstown would be eligible to be reimbursed for the cleanup of that site and it would happen immediately, not years down the road. Supervisor said he wanted to make that comment. It is not as if we are saying we don't care what happens there. We do.

Mr. Beaton asked Mr. Jacobson, Town Attorney, where the 30 foot widening on Western Highway was supposed

to take place? Is it the entire length of it or just in front of Carbone? Town Attorney said this is in the recommendations of the Clarkstown Planning Board and he would assume it is only for a short distance in front of the Carbone property. He did not think they are talking about widening the whole of Western Highway.

Appearance: Mr. John Cuff
Pheasant Drive
West Nyack, New York

Mr. Cuff said we are light years ahead of the program. He asked what it costs his household per week to get rid of newspapers right now? Supervisor said he could not say offhand what it costs but that we do get \$10.00 a ton for the newspapers. When the Landfill closes and we have to truck that to some location for about \$80.00 a ton every ton of recycling that we do or we take out of the waste stream would save the taxpayers of Clarkstown \$80.00. Mr. Cuff said that is very easy to say but he said he thinks it is costing him, homeowner, probably a couple of dollars a week to get rid of ten pounds of newspapers. So if we were to figure that out at \$2.00 for ten pounds a hundred pounds is going to cost me maybe \$10.00 or \$15.00. If you get up to a ton it's going to cost him well over \$100.00 which is more than the cost of virgin material to make newspapers. Mr. Cuff said he takes what is going on right now as a big psych job. We are paying a fortune to get rid of newspapers that there is no market for anywhere in this country. It is costing him and every homeowner to go along with this recycling. kick and we are paying more to get rid of it than the market price is if there was somebody to buy it. Unfortunately, there is very little market to buy newspaper print. It has to be dry, it has to be bundled and it has to be weighed. What we have created is a beautiful thing. Oh! We're recycling. We're environmentalists. We're concerned. But we are paying ten times what it would cost us if we just put it in our garbage can every day.

Now, we are on a clear glass kick and he did not know where the market is for clear glass. He said he did not know what we get a ton. It costs money for them to stop at his door every Tuesday and pick up the clear glass. He said he knows it costs a lot of money to come and pick up the newspapers every week. Then it is all taken off. Do we know where this stuff is going? You were always concerned about where our garbage is going. Where is our newspapers going? Supervisor asked Mr. Bollman, Director of Environmental Control to tell Mr. Cuff where the newspapers were going. Mr. Bollman said newspaper is given to Garden State Paper Products. We deposit it at the Thruway Recycling Center which is part of Garden State Paper. Mr. Cuff said and we are being paid for that newspaper. Mr. Bollman said that is correct. Mr. Cuff asked what Mr. Bollman would say we are making per ton on newspaper right now, taking labor, transportation costs, costs of the truck and everything else into effect and the cost to the homeowner, how much are we making per ton on newspaper? Mr. Bollman said he did not have those figures but he wanted to address Mr. Cuff's other question. It might be more costly than to make virgin paper but if we are going to pay, say \$100.00 per ton, to get rid of garbage—newspaper being part of that—and your newspaper can be collected for \$70.00 per ton and can pay \$20.00 per ton for Garden State to taken it away from me because I might have to pay them soon to take it. That is still \$90.00 versus \$100.00 and he would have to argue with Mr. Cuff it's better for the taxpayer to get rid of that paper at \$90.00 a ton than it would be to throw it into the garbage and transfer it to Ohio at \$100.00 per ton.

Mr. Cuff said talk is in New York City they are going to start mandatory recycling of newspaper out of New York City. Do you think that might have a slight impact on the newsprint market—waste print. Supervisor said absolutely. Mr. Cuff said if there is any kind of success with the recycling of newsprint out of New York City

we are going to be paying a fortune to get rid of newspaper. Mr. Cuff said no one is more concerned about the environment than he is. He was born and raised here. Mr. Cuff said we put the cart in front of the horse. We are very chic by recycling but we are being conned all the way. We are paying an exorbitant price to get rid of it now and if these other townships and municipalities and if New York City climbs on the bandwagon and gets into recycling it's going to wind up costing us three times as much to get rid of newspapers as it is if we would just throw the darn things into an incinerator or mass burn facility and get rid of them. Mr. Cuff said he remembered back to 1946 when the mill in Piermont was running twenty-four hours a day, seven days a week for the war effort. Right where Manley Chevrolet sits right now was a big tin storage shed where all the newspaper came in for the war effort and was transferred down to Piermont to be recycled in the mill. All of sudden the war was over. There was no market whatsoever for newsprint. Do you know where it all wound up? Right over where we have our Landfill right now. That's that base coat of our Landfill because there was no market for it in 1946. If there is ever a concerted recycling effort by municipalities like New York City or Yonkers, etc. we are going to be paying ten times as much as we are paying right now to get rid of newspapers. Leaves—that's a whole other chapter. These people probably don't even know it but we are importing leaves from New Jersey now into West Nyack because we are going to set up some kind of a composing facility by importing leaves from New Jersey into West Nyack.

Supervisor said in regard to recycling, the State of New York, Department of Environmental Conservation, has required all municipalities in New York State to recycle. We have a mandatory recycling law in the Town of Clarkstown. When our Landfill closes we would then have to truck, if we did not recycle which we are doing now, 100% of our solid waste out of state which would

jack up the cost of garbage disposal tremendously. Recycling has to be done and it must be done. He did not say that this is the site it must be done at but regardless of that it must be done. The Town of Clarkstown will do it. Town of Orangetown is doing it and our programs are very similar. It has to be enhanced because when our Landfill closes Orangetown's source of getting rid of their garbage also goes away. They must come up with an alternate. We must recycle regardless of what happens with the Carbone Recycling Facility.

Mr. Cuff said he envisions the day when Ohio and Pennsylvania and Iowa and all these other states are going to turn around to the State of New York and say solve your own problems. Supervisor said he agrees with him. Mr. Cuff said we should not be going too deep into this stuff. He said he does not think Albany has all the answers either. They've never had the answers on anything else so he did not know where they would have the answers on recycling.

Supervisor said we must recycle.

Appearance: Wayne Gavioli, Esq.
representing the Blauvelt
Association residents from
Orangetown

Mr. Gavioli said they have long advocated a recycling program and when many officials could only think of incinerators and placing that incinerator in West Nyack, we joined with our brothers and sisters in West Nyack and successfully opposed that plant. When others were thinking about other sites for incineration we were in Albany lobbying for DEC regulations that would preserve the environment for all people in the County of Rockland and the State of New York. He said their record of advocating and promoting recycling is a long one, one that we took long before most of the elected leaders here in the County. Even today we are consulted by many of the

people at the County level concerning recycling. He said they oppose the application for the special permit tonight because they have always felt that you do not solve one problem by creating others. He said they see the very real need for a recycling center but we say this is the wrong site. We cannot understand how a determination to place a garbage center for recyclables items, first of all, can be made without a full environmental impact statement. Secondly, he said they indicate to you that there is a very fine line indeed between recyclable garbage and non-recyclable garbage. There are many people who indicate that 90% of the waste stream is recyclable. He said he sees the day when this Town will be boxed in to the very real situation of just what is a recyclable. How will you monitor this recycling center? How will you deal with what is or is not recyclable? Who is going to distinguish it? Who is going to go to Mr. Carbone and say this is a recyclable but this is not when there is no unanimity of opinion in the scientific community today. The very real possibility exists that what you will have is in name a recycling center but in actuality a garbage center. History has taught us to be very wary indeed of applicants who have tried to operate private recycling centers. Unfortunately, the history is not a good one. Only too recently a great deal of publicity was given in the mass media concerning a recycling center located in the State of New Jersey. That was licensed, that was approved and it was supposed to be for recycling. We know the story that what it became was what this might very well become—a garbage dump. For two years the municipality, its Town Attorney, its municipal attorneys and the town fathers tried to close it down. For two years they were unsuccessful. The result was the great fire that did take place which resulted in the burning of steel and the twisting of metal on the highways in New Jersey. We know that this is not the only center where this has happened. It has happened in other locations here in the State of New York, most recently out on Long Island.

He said we know too that this applicant has already indicated to the DEC that this is not going to only be a recycling center. For this evening it is. For the DEC it was going to be a waste transfer station as well. That is his application. Those are in fact his words, not mine. He said the intention is obvious. It was stated hereby a prior speaker that this is the attempt to get the foot in the door. Mr. Gavioli said the application itself has been an indication that there is an approval from DEC—Assemblyman Hinckey, Assemblyman Coleman and DEC regional personnel have looked into this on our behalf. They have indicated that the application itself seems to be fraught with irregularities. One of the irregularities is that at a time when this Town did not permit a recycling center for the transfer station, the application was made and granted without any knowledge to the DEC that it was not permitted under your zoning code at that time, something that it is customary for DEC to be advised of and important in its determining process as to whether or not to grant those permits.

In answer to a question from Councilman Kunis, Mr. Gavioli said there is no specific question but a series of questions relating to municipality and the right to use this particular use there. There is not a specific question no. Mr. Gavioli referred to a DEC memo that they received on November 10, 1989 which he would get back to in a little while.

Mr. Gavioli said it is obvious, he thinks, moreover that the application which was made to DEC is fraught with even further irregularities. At that time it was indicated that the maximum would be 50,000 cubic feet which as DEC regional personnel indicate is mere pittance and far, far less than anything anticipated at the current time. Mr. Gavioli said he knew that Mr. Resnick has indicated that this will be a wholly enclosed facility. In point of fact, DEC's revised regulations now mandate that so there is nothing that they are doing gratuitously. It is something that DEC has decided must be done.

Mr. Gavioli said your own Town Planning Board has highlighted for you very clearly that although we may wish and we may hope the reality is Western Highway will be the means of ingress and egress. They indicate to you in their own memorandum that it will require a widening of Western Highway so that we know where all this truck traffic is going to come and it is going to go down and most importantly impact the communities surrounding it. He said as far as what is going to happen with the Magees, etc., gentlemen and lady of the Board, let's not fool ourselves. These negotiations and discussions have been going on since the summer. They bore no fruit. Let's not misrepresent that in fact tomorrow everyone is going to sit down and we are going to resolve this. For a period of many months this has been ongoing. It has not been resolved and he, would daresay it is not going to be resolved. Just to highlight for the record, the County has indicated that this is within 100 linear feet of the flood plain. Of course, the County's own Highway Department has concern too about the dirt, the dust, the mud being trucked onto Western Highway. In point of fact, Thomas Gill, Principal Engineering Technician, of the County Highway Department sent no less than five (5) memorandums to the Town of Orangetown indicating that roadway is incapable of handling any additional truck traffic.

Mr. Gavioli said finally he would refer to a several page letter which he received from DEC, Alexander J. Cresluk, Jr., Deputy Regional Permit Administrator dated November 10, 1989. He stated that Mr. Cresluk is concerned by this proposal and indicates his concerns are for the potential spills and waste leachate leaving the property. He indicates furthermore that they are not necessarily going to go along with this as 50,000 cubic feet would be minimal amount far less than what they anticipated and "We will request the Town of Clarkstown provide specific information to us regarding the proposal it

is presently reviewing so as to determine whether this proposal in fact meets DEC requirements at this time in view of these concerns."

Mr. Gavioli said it has been mentioned and Mr. Jacobson has raised the point and he (Mr. Gavioli) will answer it whether or not there is a truck ban in the Town of Orangetown. The answer is yes there is. It was recently enacted several weeks ago. He said it seems inexplicable to him that this Town Board and your fellow Town Board members in Orangetown which only recently found that there was too much truck traffic on Western Highway and enacted a truck ban, in an area in which we are now talking about locating a facility that could only do more damage and increase that traffic. He said quite frankly this application has a pungent stink to it and he thinks it smells like garbage.

Appearance: Mr. Kalinowski
83 Western Highway
West Nyack, New York

He asked how many of his neighbors were here tonight and asked them to stand up. He addressed the Board and said that they were impacting his and his neighbors lives. He said we have our houses here and we will be in this area for a number of years. He said you are deciding on our fate and on our children's fate. You are increasing truck traffic immensely. You have to get together with the County. Business sense usually dictates that volume production reduce costs. You are going to do it alone and all the other towns are going to do it alone. He said he did not think so. He thought it was going to be in his backyard. He said he would like to know how and why you can offer up a facility of a private company to another town? You are offering their business.

Supervisor said what he is saying to the Village of Nyack is that if they want to come along with Clarkstown with regard to recycling they are welcome. We have to

recycle regardless of this application. If the Town Board turns this down we still have to recycle and his offer to the Village of Nyack if they want to come with us and use the same system we are using is fine. We are not oblivious to what people are saying. Otherwise we would not be engaged in public hearing. If we decide that because of traffic or any other reason that this should not be done here we still have to recycle next year.

Mr. Kalinowski said you do not have to impact the environment one way to resolve a problem that already exists and you are going to impact the environment. He said he also has the application to the DEC and if you will note on that every question is answered with no impact. There is impact. There is impact every day that extra trucks go down that road. You have allowed a mall to be considered to come in here now. Western Highway is the connector down into New Jersey. There are as many Jersey plates coming up that street now as ever and there will be more because it is a real convenience to get away from Route 303 and the death trap that exists there. There is no lights. You can travel it cleanly. The truckers know it and they use it. You promised me it would stop at the last meeting and you haven't done it. Supervisor said we have had enforcement out there. He said he could not guarantee 100%. Mr. Kalinowski asked if this recycling center had gone out to open bid—is this a competitive bid basis? Supervisor said this application is a private matter. Mr. Kalinowski asked if he was wrong in the assumption that any business that the County or the Town gets involved with usually goes out on competitive bid basis. Supervisor said if it exceeds the threshold on the bidding which is \$7,000.00. Supervisor said this would be a contractual thing based on the price of it but it could conceivably go out to bid, yes. Mr. Kalinowski asked why couldn't it go out to bid. Supervisor said because we don't even know if it is going to be there. Mr. Kalinowski said what if somebody comes in with a lower

bid and it is someplace else. You are not opening up all of the possibilities is what he is getting at. You are situated at one site now. You have an offer of Snake Road. Put it up to competitive bid between the two guys. Let them run it from the current dump. Supervisor said that is an alternative and Mr. Kalinowski said it is an alternative that is not being pushed right now. This is just something that is going to lay down there and if these people don't stay on your neck every damn day of the week it's going to be on Western Highway and we are going to be on your neck. He said he has tried to call and ask Mr. Grant to come in. He's been on vacation. We had a hard fought victory. We need the Town and the County here together communicating. It's not happening. All you have is West Nyack and Western Highway fighting you and fighting the Town Board to reduce traffic. We suspect that there will not be a connecting road coming through. You have open land available. He said he has not heard the Supervisor once this evening ask these gentlemen to contract out with you to run a recycling facility on a site that is already a dump. Why does he have to put it on Western Highway when you can use the dump right now. Supervisor said he is applying for it there because he owns the property. Mr. Kalinowski said let him leave his trucks there right now just as he always has. Let him contract out to manage the service on Route 303. Why not? Supervisor said you are assuming that the Town is just going to pass on this special permit. The Town Board has not made that decision and the purpose of a public hearing is to get input from the public. You were here a couple of months ago. We told you there would be a public hearing. That is why you are here. That is why we are listening. Again, the traffic situation which you raise on Western Highway would have to be dealt with regardless of this facility being proposed. That is a problem that has to be dealt with regardless. We have to recycle also, regardless. You have mentioned some other alternatives. The Town Board has to take that into consideration. It

will. Mr. Kalinowski said he hopes they do and he hopes they keep it off Western Highway. We really don't need it there and there are better alternatives.

Appearance: Ms. Maria Hertz
95 Western Highway
West Nyack, New York

She said she would like to congratulate her fellow citizens who live on Western Highway for the very good job they are doing compiling information. The first meeting we attended we were totally raw. We did not know what was going on because we were innocent enough to trust you, our representative. Now we found out that we couldn't do that so we started digging for information. We have done an excellent job. She said she wanted Mr. Holbrook to know that no one is out to get him. There have been some harsh statements made and she wanted to tell him why. She said the first meeting when everybody complained about the traffic you told us you were going to do something about it. Within two days there was a sign on Doscher Avenue and Western Highway stating that Five (5) ton trucks were allowed. She said not a single violation or summons has been issued to any sixteen wheelers passing by. What is the use to have a law if it is not enforced. She said Mrs. Smith was the only one on the Board who accepted her invitation and came to her house. While she was there in five minutes we counted seven sixteen wheeler trucks going by.

She said she would like the Supervisor to answer their questions and not be referred to Mr. Bollman all the time. She said she was speaking not from papers but from her heart. She asked him to please consider the health of their children and themselves. She said the people in the rest of the Town, Congers included, have been silent on what is happening to the people of West Nyack. But if this facility goes in there everybody is going to be affected—healthwise for everybody. She appealed to the

Town Board from her heart and asked everyone of them to vote from their conscience not to back up anybody else.

Appearance: Mr. Bruce Broadley
West Nyack, New York

Mr. Broadley said here we go again looking at a special permit to create some wealth for somebody else—for a property owner at the expense of the homeowners in the area. This time the creation of the wealth would be affecting not so much the pocketbook but the lives of the people. Western Highway is a busy highway. It has trucks on it. Unfortunately we don't do too well in our negotiations with the other towns—Orangetown or Ramapo. They always seem to get the best of us. There is a limitation on the road. Unfortunately, the Clarkstown police don't really enforce it, because as we all know the Clarkstown police's job is (1) being arrogant to the citizens and (2) chatting with each other and (3) having coffee and that is the impression you get of them as you go around the town. It is quite apparent. The current recycling program is an interesting kind of thing. It isn't too effective. He said he had a lot of recycled goods this week. The blue box was filled up with newspapers and we had some clear glass which we put in a bucket and put it right next to it. Unfortunately the bucket was brown so they didn't take any of the glass that was right next to the papers. That's the way things go in the Town. Supervisor said they should have taken it.

Mr. Broadley said we see that West Nyack gets a lot of this stuff. They get the Pyramid Mall, they get the dump, they are going to get the transfer station and they are going to get the recycling. Dump everything in West Nyack rather than in pristine New City. It's no secret why New City doesn't get anything. If you look at the demographics of Clarkstown every politician knows that an election can be won if you carry New City and New City has more votes than the rest of Clarkstown com-

bined. You have more population than the rest of Clarkstown. Look at the Rockland County Census. That may be wrong too. Again, it is a government report. That's why pristine New City doesn't get things. They have the population. They have the power base. What you are forcing us to do and as we get down the pike and get more and more of this crap you are forcing West Nyack to really seriously consider incorporation as the Village of West Nyack. The Village of West Nyack will take tax revenues away from Clarkstown because we would do certain things ourselves. In today's atmosphere where we just want to control zoning, the Village of West Nyack would seek to have borders which would capture properties such as Pyramid and capture properties such as the Town dump and the recycling things within their boundaries so that we could not only have appropriate zoning but so that we could have an aggressive and strict and enforceable village code contrary to what is currently done in Clarkstown where the town code is many times not enforced. This is what you are doing to us and what you are going to have is the same phenomenon you had in Ramapo. We have had a lot of inquiries from Congers, from Valley Cottage, from Nanuet and as you know in Nanuet, Mr. Teplitz is looking into that. You are going to have a situation where there is going to be villages and Clarkstown proper will be New City. You are forcing us into that if you don't start responding to the needs and requests of the West Nyack citizens.

Appearance: Mr. Ted Galloway
24 Green Road
West Nyack, New York

Mr. Galloway said his street is just north of Carbone and is probably known to you as a dangerous intersection. He said he wanted to give an example of the problem in response to the request for this facility. He said his wife was involved in an accident at the corner of Western Highway and Green Road. She is fine but we keep get-

ting more trucks coming down Western Highway. He said the next foggy morning, of which there are many and a five or ten ton truck comes along, she isn't going to be here.

Appearance: Ms. Maryann Brancatelli
2 Hobbe Street
West Nyack, New York

She said she has called the Supervisor many times about garbage being picked up at 3:00 or 4:00 A.M. She said she wanted to know why and where it is going. She asked if there was anyone who could answer that. Supervisor asked if she was talking about the Carbone facility. She said they pick up at at time at the medical building. Many of them have called the police and it stops for a while but then it continues again. Why are they even allowed to pick up at 3:00 or 4:00 in the morning. The Supervisor said they shouldn't be. We have looked into it. He said he did not have a good answer for that except it shouldn't be. She said she hoped that would be resolved soon.

Ms. Brancatelli said they are against the proposal for a transfer station here in West Nyack. She said we already have the dump and now the idea of a transfer station transferring trash to our community is outrageous. She said they are tired of having such a fine community become the butt end of Rockland County's woes. She said they were tired of having anything dumped upon us against the democratic wishes of the community. A transfer station brings with it an air of ugliness and the sense of community is becoming environmentally unsound. She said with the opening of a transfer station comes along the problems of added truck traffic along Doscher Avenue, Western Highway and other nearby roads. She said we are intolerant to this scourge. The tractor trailers and trucks traversing across these streets pollute enough diesel smoke to fuel the entire steel city of Pittsburgh and

she asked the Supervisor if they have to be forced to breathe any more toxins? She said also remember the fresh air of the spring, the crisp air of the fall and the memories they bring to mind. Well, the only memories we have are the dirty polluting air being inhaled into the lungs of our children and the filthy diesel smoke hovering over our homes. Is the stuff we want our children to grow up in? Is this the stuff we want in our future? In the Sunday New York Times they have a section which asks Would You Like to Live in—and there was a section once regarding Nanuet. They said in it, besides Nanuet, the Town of Clarkstown includes—and they named the hamlets. West Nyack wasn't even mentioned. We didn't even exist. In the eyes of Clarkstown we seem to exist only as a doormat for all to wipe their feet on us. She said right now she can't even open her doors and windows because of the fumes that come pouring through. This summer, she said she was eight and nine months pregnant and could not even use her house fan. She was a prisoner in her own home because all the fan brought in was fumes, not only from the trucks but from the dump. Don't create problems without solutions. We have eight toxic areas in about three square miles. Think about all of us in Clarkstown and don't forget about us in West Nyack. She said she wants to live and not die with her family in her community.

Appearance: Ms. Mary Kuhnar, President
Association of Residents in Blauvelt
Blauvelt, New York

Ms. Kuhnar said Councilman Kunis asked a question about specific questions on the DEC permit application for an environmental assessment form that was filled out by Mr. Carbone she would assume. She said there is one question which asks were any permits needed from the town and did he have them and Mr. Carbone answers yes and the permit number is 75-711 which should be checked into. We will provide you with a copy of this.

Councilwoman Smith said 75-711 is a building permit for the garage. Supervisor said that sounds like it was issued in 1975. Ms. Kuhnar said this was the permit which he presented to the DEC as his right to have a transfer station. Supervisor asked if Mr. Carbone submitted that and Ms. Kuhnar said yes. She said she would like to add that she feels very sorry for the residents of West Nyack for what is happening to them and has been happening to them in the past. She said she wished the Town Board would listen to them because you can find alternative ways to have a transfer station. Have it on Route 303 but do not subject these people to the kind of truck traffic they are going to have from the garbage trucks that will be coming from all over the county. She said she is sure that will happen if this goes through.

Appearance: Mr. Frank Winbush
58 Western Highway

Mr. Winbush said he works at Stewart International Airport and right below where he works there is a recycling and transfer center. It started out as a recycling center. Now it is a transfer station. He said you should reconsider putting it on Western Highway because of the truck traffic. He said every morning when he goes to make that turn to go into the airport he is either behind trucks or people from the area who are taking papers or recycling glass or whatever to dump it off there. The truck problem wouldn't be your biggest problem although they do spill things on the road. A couple of times people have gotten into accidents because it was foggy. He felt it should be at a better site. He said where he works is right next to Route 87 (New York Thruway) and they are going to build a hotel there so in the future they probably will get rid of that transfer station because he said he was sure that people who come to that airport on business will not want to look out their window and see a transfer station. It would be better to have it somewhere else. He said where he works Route 84, Route 87, Route 9W there are tons of trucks coming all over that

place. He said sometimes he is late for work just because he is stuck behind these trucks either because they are either too slow or they have a heavy load that they shouldn't be carrying.

Mr. Resnick spoke in rebuttal. He said he understood the emotion of the issue. He said he also understood how hard pressed the Board is and how careful the Board will be in making its determination in all respects. He said the first thing that concerned him was the 50,000 cubic feet of the proposed application. He said he did not have the application but would get it from Mr. Carbone tomorrow. He said it was Mr. Carbone's recollection that the application for for 48,000 cubic yards. He said 50,000 cubic feet is miniscule relatively speaking. Councilwoman Smith said they may have forgotten the amounts but she believed it was less than 12,500 tons or 50,000 cubic yards. Then what you apply for is considered a minor application. Mr. Resnick said that was correct. Councilwoman Smith said under those circumstances no municipal agency is notified that this is even applied for. That is something that has to be changed today because she did not think the amount that we are dealing with but the fact that such a site is coming into this municipality. She felt every application should be notified through the local municipality.

Mr. Resnick said you may be right and it may well be that it is time that particular aspect is changed so that there is communication much in the way of a 239 review where all affected localities or municipalities have the opportunity to give input at the initiation stage right from the beginning so you know where you are and you can stop something that may prove to be imprudent at the earliest possible opportunity. We are not dealing here with a transfer station or garbage site. We are dealing essentially with a recycling center that takes various kinds of materials that are capable of being reinserted into the stream of commerce and reinserts them in one form or another, whether it be wood, paper, plastic, glass, metal,

aluminum in whatever form and that is the purpose of the site. Mr. Resnick said he had no problem with the definition of recyclable. He said he knows what the ordinance says and he knows what common sense says and it means to reintroduce materials back into the stream of commerce not to bury them in the ground. He said he does not have that kind of concern but he understands the constituency's concern. Garbage is not a pretty subject. We want to take our packaging, throw it away and make it go away but it doesn't work like that. We are a package conscious society. The problem that Clarkstown faces is a national problem. There are all sorts of solutions being offered. The real question he supposed was why doesn't the federal government and the state start doing something in a comprehensive way rather than leaving the it to local government and this kind of trauma that we face here tonight. He said with respect to the inspection of the facility he has a great respect for the enforcement arm of this Town. He has seen it at work. As part of any permit that site is open on a virtual 24 hour basis for inspection by any member of the Town of Clarkstown who is authorized to do it, by any member of the DEC who is authorized to do it, by any health inspector of the County of Rockland. In terms of inspection for management and maintenance it is open. It is there. It has to be. It can't be conducted any other way. He said with regard to the question of the trucks. He said he has no knowledge as to what the details of the impact of the various improvements which the Town may have on Western Highway. Nor is he privy to any of the potential solutions. He said he did recall hearing one of the neighbors complaining not about the Carbone trucks but about other trucks and that is a point that he asks the Board to keep an open mind on. He said we are but a miniscule portion of the truck traffic and we probably ride at hours when we don't impact truck traffic. Much of it would be early in the morning, he would suspect.

Mr. Resnick said he knows that the Board is familiar with the site. If the Board believes that a traffic study is necessary he can understand that. He said he does not want to pay the expense of it because traffic studies are notoriously expensive and what they confirm is that the road is inadequate and that somebody ought to turn around and improve it and then it usually turns out that it is not the municipality that needs the improvement but it is somebody else's road and you can't get it done. He said he only has to look at Main Street north of here to know that kind of a problem and the problem the Town faces there. It is a similar one on Western Highway. He said the site that we are contemplating developing and that we seek a special permit for will not by its nature contribute to pollution because it is not taking putrescibles. It will be taking cans which may have some soda in it. It will be taking cardboard which someone may have had a pizza in an office but we are not in the business of bringing household or industrial garbage to this site. That is not permitted under your zoning law and it is not our method of operation. We are strictly recyclables. He said he believes that we do conform to the zoning law in all respects but he said he would be pleased to help the board in any respect that they wish in terms of specific information or studies that it may need in order to assist it in its decision.

Councilwoman Smith said under your current DEC permit that is only valid under their regulations, not ours. She asked Mr. Resnick what the conditions are that they set for recycling? Mr. Resnick gave her a copy of the DEC permit. The conditions and requirements are all attached and submitted as part of the record. He said he thought it had been submitted as part of the application but he said he may be in error.

Councilman Carey asked Mr. Resnick the date on the permit. Councilwoman Smith read that it is dated July of 1987 and is valid through 1992 and because its already

been granted they are not subject to the December 31, 1988 regulations. It says they have the right to store recyclable materials for no longer than six months. Non-recyclable materials shall be stored at the site for no longer than twenty-four hours.

A gentleman from the audience stated then he has permission to hold garbage in there for twenty-four hours. Is that correct? Mr. Resnick said what it means is that during the course of recycling material which is not recyclable is included in the load we have to get rid of it within twenty-four hours. The facility has been available for inspection by the Town since the date of the permit. This is not unknown. What goes in and what comes out has not gone unobserved. There is no transfer station being operated there and that is the fact of the matter. One is not suggested nor is one desired. It is the wrong site for a transfer station. It is too small.

Supervisor said the Board will notify the public of any discussions they would have at subsequent workshops concerning this so that everybody will know when it will be coming up. Also we will notify people of when the Town intends to make its decision in regard to to this. He requested that anyone desiring any further information call his office.

Councilwoman Smith said she wanted the public to understand that this is not a transfer station. We have no intention of it ever being a transfer station. * * *

But, your Town has to realize that it is your recyclables that are coming to that station also. You have to do something about the traffic from the Orangetown side no matter what is there—whether it is a recycling station or continuing what the operation is. You are asking us to work cooperatively with the County. We would like very much to do that. We also want Orangetown to work cooperatively with Clarkstown. It is not just enough to complain about the traffic on Western Highway if you are the ones who are partially responsible for it.

On motion of Councilman Carey, seconded by Councilman Maloney and unanimously adopted, the Public Hearing was closed, DECISION RESERVED, time: 11:30 P.M.

Respectfully submitted,

/s/ Patricia Sheridan
PATRICIA SHERIDAN
Town Clerk

**Exhibit F to Affidavits Submitted in Support of Plaintiffs
Application—Permit No. 4429 [160-162]**

July 31, 1992

[Illegible]

- ☐ Construction
- ☒ Operation
- ☒ Initial Issue
- ☐ Renewal
- ☐ Reissuance
- ☐ Modification

Permit Issued to C&A Carbone, Inc.

Address of Permittee 183 Western Highway, West
Nyack, NY 10994

Telephone No. (914) 358-8151

Location of Project Town of Clarkstown

County Rockland

Environmental Conservation Regional Office New Paltz

Description of Project Operate a Solid Waste Transfer
Station

On-Site Supervisor Angelo Carbone

GENERAL CONDITIONS

1. The permittee shall file in the office of the Environmental Conservation Region specified above, a notice on intention to commence work at least 48 hours in advance of the time of commencement and shall also notify said office promptly in writing of the completion of the work.
2. The permitted work shall be subject to inspection by an authorized representative of the Department of En-

vironmental Conservation who may order the work suspended if the public interest so requires. .

3. As a condition of the issuance of this permit, the applicant has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by damages suffered, arising out of the project described herein [illegible] to indemnify and save harmless the State from suits, actions, [illegible] and costs of every name and description resulting from the said project.
4. All work carried out under this permit shall conform to the approved plans and specification. Any amendments must be approved by the Department of Environmental Conservation prior to their implementation.
5. The permittee is responsible for obtaining any other permits, approvals, easements and rights-of-way which may be required for this project.
6. By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with Part 360 and the special conditions. Any variances granted by the Department of Environmental Conservation to Part 360 must be in writing and attached hereto.

Issue Date 7/17/87

Issuing Officer Alexander F. Ciesluk, Jr.

Signature /s/ Alexander J. Ciesluk, Jr.

SPECIAL CONDITIONS

Waste Description:

1. This facility shall *not accept* the following wastes: liquid, chemical, explosive, industrial, hospital, (in-

fectious and pathological) sewage sludge, septage, or any hazardous or toxic wastes as defined in 6NYCRR, Part 371.

2. Vectors, dust and odors shall be controlled by effective means so that they shall not constitute nuisances or hazards to health, safety, property or the environment.
3. Safety hazards to all persons at the facility shall be minimized at all times.
4. Blowing papers and litter shall be confined to the dumping and compacting area within the facility.
5. At the end of each day of operations all debris shall be removed from the ground and stored in an appropriate container.
6. Non-recyclable waste shall be stored at the site for no longer than 24 hours. Overnight storage shall be in closed containers.
7. Recyclable materials shall be stored no longer than six months.
8. Access to and use of the facility shall be controlled by fencing, gates and warning signs. Facility hours of operation must be posted at the entrance to the site. Other means of access control may be acceptable if approval in writing is granted by this Department.
9. Access and operation of the facility shall only be permitted when adequate personnel is on duty.
10. Equipment sufficient to properly operate the facility shall be maintained on-site and in operational condition at all times.
11. Any liquid waste generated from compaction shall be collected and disposed of in a manner approved by the department. All records quantifying the col-

lection and disposal of these liquid wastes along with the identification of the waste transporter haulers involved in the disposal of these wastes shall be kept and summarized in the annual report.

12. A record of the total quantity of waste processed at the facility shall be kept on a daily basis and shall be maintained for inspection by the Department or its authorized agents.
13. An annual report shall be submitted to the Department by *June 30th* of each year. This must include: the quantity of waste processed during the year, identification of the municipalities serviced, a brief description of any problems encountered, and a detailed record of any modifications made during the year in the construction or operation of the facility.
14. All emergency situations such as fire, deposition of unauthorized waste, leachate spills or a prolonged halt to operation of the transfer station shall immediately be reported to the Department's Regional Solid Waste Engineer in New Paltz (914) 255-5453.
15. In the event that any hazardous or unauthorized waste is found at the facility, the permittee is responsible for having such prohibited wastes removed within 24 hours to an appropriate disposal facility by a waste transporter authorized under 6NYCRR Part 364 to transport such waste.
16. This facility shall be operated in accordance with the plans and reports filed by the permittee and all applicable sections of 6NYCRR Part 360. Operating hours for this facility shall be 6:00 A.M. to 6:00 P.M. Monday through Saturday.

DISTRIBUTION:

R. Gardineer/N. Patel
Rockland County Health Department

Exhibit G to Affidavits Submitted in Support of Plaintiff's Application—Correspondence, Dated April 2, 1991 [163-164]

April 15, 1991

New York State Department of Environmental
Conservation
Region 3
21 South Putt Corners Road
New Paltz, NY 12561-1696
914-255-5453

Thomas C. Jorling
Commissioner

Mr. Angelo Carbone
C&A Carbone Inc.
183 Western Highway
West Nyack, New York 10994

Re: Permit No. 4429
Transfer Station
Clarkstown, Rockland County

Dear Mr. Carbone:

There appears to be concern in regard to the type of solid waste and kinds of operations allowed at the subject facility. This letter is to clearly define the approved wastes and operations allowed under the permit to operate the transfer station, dated July 17, 1987 and to state the ramifications of the Solid Waste Management Act on the continued operation of this site.

First, in regard to the approved Solid Wastes, Special Condition No. 1 clearly delineates the wastes not allowed. This basically lists wastes that would not be allowed at landfills or require a Part 364 Industrial Waste Hauler Permits. Commercial waste and mixed municipal wastes (from households) are allowed. Construction and demolition debris is not prohibited, because at the time of issuance of the permit, that particular waste stream was

usually being disposed at the Clarkstown Landfill. Therefore, this waste can be accepted at your facility for transfer. In regard to the acceptance of recyclables, the approved engineering plan did address the acceptance of recyclables for storage and transfer. It must also be noted that baled garbage bound for incineration is not considered to be a recyclable material; it is a waste material and cannot be stored on the site for longer than 24 hours, as stated in Special Condition No. 6.

Second, in regard to the allowed activities, this facility is only approved for the transfer of solid wastes as described in the preceding paragraph and for certain recycling activities. The engineering report lists receipt, separation, storage and transfer. However, the approved engineering report does not propose any specific processing activities or equipment for the processing of construction and demolition debris. Therefore, the placement of any equipment or undertaking of processes not addressed in the engineering report would be in violation of Special Condition No. 16. This addresses the handling of all incoming wastes and recyclables.

Third, any change in the operation, as described in the engineering report and application, including an increase in waste volume, new equipment, or change in any process, requires a modification to the Part 360 Permit. Section 360-1.8(e) lists the criteria that would require a permit to construct a solid waste management facility, which is equivalent to a new application. If you wish to discuss any such modification, Region 3 staff will gladly meet with you.

Fourth, the Solid Waste Management Act (SWMA) encourages Regional solutions to solid waste problems. In Rockland County, the county is serving as the planning unit and is actively engaged in the planning process. In preparing the Solid Waste Management Plan (SWMP), under the SWMA, the county is required to address the effect of the SWMP on existing private recycling facilities.

The DEC does not feel that your facility has any entitlement for such consideration, unless the county chooses to do so. By copy of this letter, the county is being notified of this interpretation. In addition, since this facility serves primarily Rockland County, the permit renewal of this facility will be based on the results and the recommendation of the county's SWMP.

In closing, it is trusted that this has better defined the existing permit for your facility. If you have any questions, please contact either myself or Al Ciesluk of my staff at this office.

Respectfully,

/s/ Margaret Duke
MARGARET DUKE
Regional Permit Administrator
Region 3.

cc: R. Manna
M. Cech
L. Bollman
RCHD
N. Nosenchuck
A. Klauss/A. Shah
ECO M. Mazurkiewicz

**Exhibit H to Affidavits Submitted in Support of Plaintiff's
Application—Correspondence, Dated April 5, 1991 [165-168]**

New York State Department of Environmental
Conservation
202 Mamaroneck Avenue
White Plains, N.Y. 10601-5381
(914) 761-6660

Thomas C. Jorling
Commissioner

April 2, 1991

MICHAEL A. CECH
DIRECTOR, SOLID WASTE MANAGEMENT
COUNTY OF ROCKLAND
ALLISON-PARRIS COUNTY OFFICE BLDG.
NEW CITY, NY 10956

Dear Mr. Cech:

This is in response to your letter of March 19, 1991 in which you posed several questions concerning the C&A Carbone and Clarkstown Recycling transfer stations in Rockland County. Before addressing your specific questions, the following should be first understood.

The Permit to Operate for the Carbone facility was issued in July of 1987; the facility was subject to the May 1981 Part 360 regulations which were in effect at that time. The Permit to Operate for the Clarkstown Recycling Center, Inc. (CRCI) was issued in December 1990; this facility was permitted in accordance with the December 1988 Part 360 regulations. In addition, the Carbone permit was issued prior to the enactment of the Solid Waste Management Act of 1988 and the CRCI permit was issued after enactment of the aforementioned Act. This is significant because the requirements for each of the two facilities are somewhat different as explained in this letter.

The questions you have raised are listed below, followed by our response.

Question: What portion of the DEC permit allows Carbone to "accept and sort" recyclables?

Response: Special Condition No. 16 of the Permit to Operate for the Carbone facility states "This facility shall be operated in accordance with the plans and reports filed by the permittee and all applicable sections of 6NYCRR Part 360." The project description provided in the permit application and the engineer's report refers to receipt, separation, storage and transfer of recyclables. In addition, Special Condition No. 7 of the permit states "Recyclable materials shall be stored no longer than six months." From this, it can be construed that Carbone's permit allows them to manage recyclables. However, no specialized equipment for recyclables (with the exception of a paper baler) was listed in the plan drawing and engineer's report for this facility. Therefore, recycling activities at this facility are somewhat limited. In accordance with Section 360.1.8(e)(3), DEC approval is required prior to installation of any additional equipment. The language in the permit appears to be imprecise concerning recyclables by current standards since the permit was issued in 1987 based on 1981 regulations. These conditions will be clarified when the permit comes up for renewal in 1992. It should be further noted that we consider this facility to be primarily a transfer station and not a Materials Recovery Facility (MRF). It has come to our attention that the facility may have transported baled garbage destined for a waste-to-energy facility using a "manifest" which describes the waste as "recyclables." This approach is contrary to the Department's rules and regulations.

Question: The Clarkstown Recycling Center, Inc. has specific authority to handle C&D debris, whereas the Carbone permit does not contain similar language. Why

was it not necessary to exclude C&D debris in the Carbone permit?

Response: At the time the Carbone permit was issued, the Town of Clarkstown landfill was operational. It is our understanding that majority of C&D debris from Clarkstown and Orangetown was disposed of at the Town landfill in a separate area designated for C&D debris. Due to this, it was not critical to address C&D debris specifically in the Carbone permit. A review of the permit, the permit application and engineer's report indicates that the Carbone facility is *not prohibited from transferring* C&D debris; however, it is *not permitted to process* C&D debris since processing was not listed in the application. If the Carbone facility's operator wishes to process C&D debris, a permit modification would be required. As stated in our response to your first question, the language in the Carbone permit concerning C&D debris appears to be imprecise by current standards due to the different regulations in effect at the time the permit was issued.

Question: Does Condition #5 in the Clarkstown Recycling, Inc. (CRCI) permit require a County-wide Plan? Since Condition #5 appears to require a County-wide Plan, why are there two options under Condition #26?

Response: The definition of a Planning Unit in Section 360-15.2 states, in part, "Planning unit means a county . . . ; or two or more cities, towns, or villages, . . . , that the department determines to be capable of implementing a regional solid waste management program. . . ." Based on this definition, it is our understanding that the County of Rockland is the planning unit in Rockland County. Consequently, Special Condition #5 requires a County-wide Plan.

Condition #26, which is a generic condition for most solid waste management facilities, is based on the requirement in Section 360-1.11(h)(2). As stated in your let-

ter, this section presents two options as it relates to a Comprehensive Recycling Analysis (CRA). It is our opinion that if a County-wide Plan does not go into effect, the requirement to have a municipal CRA would still apply. If a County-wide Plan goes into effect by the dates indicated, the municipal CRA option would become moot.

Question: What recycling equipment is authorized in the CRCI permit? Where does the permit allow for processing or handling of recyclables?

Response: In general, construction of a solid waste management facility must be in accordance with the drawings approved by the Department. The plan drawings for the Clarkstown transfer station show i) a baler for solid waste, ii) a storage area for recyclables within the building, and iii) a recycling area outside the building, consisting of a ramp and containers. *No other recycling equipment is authorized in the permit.* CRCI may be able to use the existing baler for baling plastics, paper or cardboard; however, no additional equipment can be installed without the Department's approval. This approval will require a construction permit modification under Section 360-1.8(e).

Special Condition #4 states that the permittee is authorized to accept and sort recyclables for transfer to other facilities for recycling and reuse. This would allow the facility to handle recyclables. Since the permit does not allow installation of any specialized recycling equipment, the sorting and/or processing would most likely be limited in nature.

The Department considers the CRCI facility to be primarily a transfer station and not a materials recovery facility.

Question: Under what conditions will the permittee (CRCI) be operating after February 15, 1991 date which is referenced in Special Condition #2.

Response: After February 15, 1991, permittee is subject to all conditions in the permit; operation must be in accordance with the approved drawings and reports and all applicable provisions of Part 360.

In closing, the concerns raised in your March 19 letter and previous letters are such that the Region will contact these two facilities in writing and delineate which specific waste may be handled and which specific activities they are entitled under their existing permits. In addition, these notifications will also delineate the activities they are not presently entitled and for which they must submit modification applications if they wish to undertake such activities. Both facilities will be advised that any future activities must be consistent with the Rockland County Solid Waste Management Plan. You will receive copies of these letters and any future correspondence with these facilities. It is the goal of this Department to insure that the County is not hindered in any way from implementing a comprehensive solid waste management plan.

Please contact me if you have any further questions or concerns.

Very truly yours,

/s/ Ajay R. Shah
AJAY R. SHAH, P.E.
Environmental Engineer 2
Division of Solid Waste
Region 3

cc: Hon. John T. Grant; County Executive
Hon. Herbert Reisman, Chairman, Solid Waste Committee
Hon. Charles Holbrook; Supervisor, Town of Clarkstown
Joseph Puchalik, P.E.; County Health Department
Ralph Manna
Al Klauss/Rich Gardineer
Margaret Duke

Exhibit M to Affidavits Submitted in Support of Plaintiff's Application—Environmental Assessment Form [240-245]

**TOWN OF CLARKSTOWN
ROCKLAND COUNTY, NEW YORK**

PROPOSED SOLID WASTE TRANSFER STATION

**STATE ENVIRONMENTAL QUALITY REVIEW
(SEQR)
FULL ENVIRONMENTAL ASSESSMENT FORM
(EAF)**

PART 3

The Town of Clarkstown is presently negotiating with the State Department of Environmental Conservation (DEC) the terms of a Consent Order which will set a date for the closing of the existing Town sanitary landfill and require a Remedial Investigation and Feasibility Study (RI/FS) to be performed at the landfill site.

The necessity to close the existing landfill requires that immediate steps be taken to provide an alternative means for disposal of the municipal and commercial solid waste originating in the Town of Clarkstown. At present, there is no approved site for the location of another solid waste landfill in the Town of Clarkstown. Rockland County is now developing a Solid Waste Management Plan which will establish the methods by which waste reduction, recycling, and solid waste disposal will be accomplished throughout the County. It is anticipated that the development and implementation of this plan will take at least 5 to 8 years to complete.

In order to provide for disposal of solid waste after the closing of the existing landfill, the Town of Clarkstown is proposing to construct a solid waste transfer station on the existing landfill site. The transfer facility

would be located approximately 250 feet north-west of the existing [illegible] and garage and 230 feet back from N.Y.S. Route [illegible] the landfill where only construction debris has been deposited. The total project area is 7.0 acres and includes the existing office and garage building, the storage building and the landfill scale. Frontage along Route 303 is about 700 feet. The entire transfer station facility will be constructed within the leachate collection system which surrounds the present landfill. A project location map and a topographic map of the landfill showing the location of the proposed transfer station is included with this submission.

The proposed capacity of the transfer station has been estimated at 500 tons per day. This figure was developed from landfill scale records and includes solid waste received from both the towns of Clarkstown and Orangetown. The Town of Orangetown has been a contract user of the landfill for over 20 years and is facing a situation similar to Clarkstown with the landfill closing. Capacity for their use is being provided so that they can utilize the facility for their immediate needs as well as allowing for use of the transfer station in the future as part of the Rockland County disposal plan.

In the selection study for the proposed site, other parcels in the Town which were located in manufacturing or laboratory/office zoned areas were also reviewed. The availability and size of parcels of land in areas with this zoning was limited. Existing adjacent residential or regional shopping development, local traffic restrictions, necessary topographic considerations and the adaptability of the proposed transfer station to the local land use plans eliminated other parcels from realistic consideration.

The advantages of the existing landfill site over any other parcel includes:

- (a) the continued use of a site already established as a solid waste handling area,
- (b) the existence of an office and garage building and 60-ton scale at the site located within the proposed project parcel area of 7 acres,
- (c) maintenance of existing traffic patterns for delivery of solid waste to the transfer station from both the towns of Clarkstown and Orangetown,
- (d) major State roads and highway routes directly to and from the site,
- (e) site topography which allows for the differential elevations necessary to provide a transfer facility with limited "cut and fill" requirements, and
- (f) location of the parcel within a total area of over 100 acres in size which is owned by the Town of Clarkstown.

The following evaluations are provided for the impacts which must be considered as a result of the location of the transfer station at the proposed site.

Impact on Land

The landfill site on which the parcel for the transfer station is located has been identified as a Class 2 site. This classification indicates that there may have been deposits of some hazardous or toxic wastes at the site. The DEC is requiring an RI/FS to be made to identify any of these wastes which may be present and to take necessary remedial action to alleviate this condition.

The parcel on which the transfer station will be located is in the front portion of the site along Rt. 303. Deposits in this portion of the fill area have been only construction and demolition debris as well as an earth berm to act as a screen for the middle and rear operat-

ing sections of the landfill. Geotechnical and hydrogeologic investigations made in 1936 as part of the existing consent order requirements show that approximately 10 feet of highly impermeable peat exist immediately below the construction debris and that a gray varved clay layer, also some 10 feet thick, exists below the peat in this project area. This material has a vertical permeability of less than 1×10^{-7} cm/sec. Higher horizontal permeability values can be expected.

A leachate collection system consisting of a vertical liner from an elevation above the ground water level down into the peat layer and approximately 9,000 lineal feet of collection pipe tributary to 7 Collection Chambers surround the existing landfill. Leachate from this system is pumped to 2 Holding Basins. A pump station is presently being completed at the site which will draw leachate from these Holding Basins and pump it to the Rockland County Sewage Treatment Plant. Extensive tests made on samples taken from the leachate system indicate that the treatment plant can treat this flow without any pretreatment. Monthly tests on the leachate will be made to insure that the liquid being sent to the plant is acceptable. Present quarterly tests which are being made by the Town continue to show that the leachate draw from the landfill can be treated at the plant with no adverse effects on the treatment system. The proposed transfer station is within this leachate collection system.

It is expected that a pile foundation will be required to support the transfer station, however, it is not anticipated that this will have any effect on the subsurface drainage structure which contains the leachate described above.

Noise and Odor Impacts

The solid waste delivered to the transfer station will all be handled inside of the proposed structure and de-

livery of material to the facility will not be accepted after 3:00 p.m. No solid waste will be stored at the site. Some material which has been placed in a covered transfer vehicle may be kept on the tipping floor over-night for early delivery to the disposed point the next day. Some odors may be present during the day, however, high ventilation exhausts from the building will keep the odors to a minimum. The location of the structure some 230 feet back from Route 303 will also reduce the probability of any odors to the surrounding area.

Noise levels within the facility during the day will not be above that which presently exists in the area.

Impact on Public Health

Some excavation in the construction debris section of the existing landfill will occur during construction of the transfer station. Since the transfer station will become active after the closing of the landfill no disturbance of material adjacent to the facility is anticipated.

**Exhibit O to Affidavits Submitted in Support of Plaintiff's
Application—Velzy Associates' "Plan and Report" [249-280]**

**TOWN OF CLARKSTOWN
ROCKLAND COUNTY, NEW YORK**

**MAP, PLAN AND REPORT
FOR THE ESTABLISHMENT OF
TOWN GARBAGE AND REFUSE DISTRICT**

SEPTEMBER 1987

VELZY ASSOCIATES

**Charles R. Velzy Associates, Inc.
Consulting Engineers
Amonk, New York
Buffalo, New York
Cape Place Long Island,
New York
York, Pennsylvania**

TABLE OF CONTENTS

	Page
GENERAL	[88]
SCOPE OF PROJECT	[90]
COLLECTION OF MUNICIPAL SOLID WASTE	[91]
COLLECTION OF BULK, WHITE GOODS, ETC.	[93]
RECYCLING PROGRAM	[94]
LEAF PICKUP AND COMPOSTING	[102]
FINANCING	[104]
TYPICAL COSTS	[109]

TOWN OF CLARKSTOWN
ROCKLAND COUNTY, NEW YORK

MAP, PLAN AND REPORT
FOR THE ESTABLISHMENT OF
TOWN GARBAGE AND REFUSE DISTRICT

GENERAL

The Town of Clarkstown has been providing for the disposal of municipal solid waste at the Town Sanitary Landfill south of Route 59 and west of Route 303 in West Nyack for well over 35 years. During this period the Town of Orangetown, under the conditions and requirements contained in agreements negotiated between the two Towns, has also been utilizing the landfill for disposal of residential and commercial solid waste. In recent months, the Town of Ramapo, because of conditions which have eliminated their ability to transfer solid waste to a balefill in Pennsylvania, has also been allowed to dispose of their solid waste at the Clarkstown Landfill. The average daily quantity of solid waste delivered to the Clarkstown Landfill from the three Towns, including all Villages within their boundaries, is approximately 750 to 800 tons.

At present, the Town sanitary landfill is being operated under the provisions given in State regulations governing the operation of landfills and a "Consent Order" issued by the State Department of Environmental Conservation (DEC), the Agency assigned the responsibility to regulate and control the operation of solid waste disposal facilities in the State.

The DEC, under the provisions included in the Consent Order, has the power to immediately close the existing landfill if certain operating conditions and restrictions are not met. It is urgent, therefore, to develop a long term answer to both the Town and County's solid waste disposal problem by developing a regional resource re-

covery facility or a new landfill which meets present DEC requirements. In the interim period, the existing landfill must be operated in a manner which will both protect the environment and save as much capacity as possible so that its useful life may be extended.

In order to more effectively control the quantity of solid waste being delivered to the landfill so that the valuable remaining capacity can be extended over a longer period, the Town of Clarkstown is proposing the creation of a Town Garbage and Refuse District pursuant to Article 12-A of the Town Law.

The formation of this District will allow the Town to institute a program for the collection of municipal solid waste, trash and construction materials; establish a recycling plan which will reduce the quantity of material dumped at the landfill while returning used material back into the economy so that natural resources may be conserved; and, provide for the pickup and composting of leaves which have been previously placed in the landfill.

In order to obtain total compliance with this concept, it will be requested that the Towns of Orangetown and Ramapo, as well as the Villages within these Towns whose garbage forms a part of the total waste stream, also establish Garbage and Refuse Districts, or other regulating controls, so that the same approach to the management of solid waste is obtained by all those municipalities utilizing the Landfill.

The proposed District discussed in this Report will include the entire unincorporated area of the Town of Clarkstown, the Village of Upper Nyack and those portions of the Villages of Spring Valley and Nyack, located within the boundaries of the Town. In order for the Villages to be part of the Garbage and Refuse District, it will be necessary for each Village to pass a local law or resolution subject to a permissive referendum authorizing the Village to join such a District.

In order to create the District, it is necessary for the Town Board to direct preparation of a map delineating the boundaries of the proposed District, a Plan and Report. This Report will indicate the reasons the Garbage and Refuse District is being formed, how the District will operate and how it will be financed.

A map, showing the area included in the proposed Town Garbage and Refuse District, is included in this Report.

SCOPE OF PROJECT

This disposal operation which includes the placement of solid waste and daily cover material, leachate collection and disposal, closing of a portion of the south section of the existing landfill, drainage control, methane containment and monitoring requirements, will remain the responsibility of the Town Department of Environmental Control and the costs for this disposal phase of the solid waste program will continue to be included in the Town budget.

The portion of the solid waste management program which will be administered by the Garbage and Refuse District will be:

1. Collection of Municipal Solid Waste
2. Collection of Bulk, White Goods, etc.
3. Material Recycling Program
4. Leaf Pickup and Composting.

These four parts of the collection and recycling program will be reviewed in order to establish the most cost effective method and will be discussed individually in the following Report. Proposed regulations, required capital expenditures, operation and maintenance costs, estimated incomes, financing procedures and estimated costs to property owners are included in the Report.

COLLECTION OF MUNICIPAL SOLID WASTE

Collection of solid waste, both residential and commercial, will continue to be accomplished by private carters. Permits and licensing of these carters will remain the responsibility of the Town Sanitation Commission.

Carters will maintain their own routes and customers. Service will still be required twice a week at the rear door, with a maximum of four cans within specified weight limits per pickup.

Fees for residential garbage collection will continue to be established by the Town Sanitation Commission after review with the carters.

Commercial, industrial, condominium, town houses and apartments will also be served by private carters, however, there would be no set rates established by the commission for this service.

It is intended that in the first phase the residential waste picked up by the carters will no longer include newspaper, clear (flint) glass and cans. Source separation of this type of solid waste will be required by all residential homeowners. In the second phase, commercial, condominium, apartment, etc., owners will be required to take part in this recycling program although their inclusion is not mandatory at this time. The second phase of the project shall be instituted within one year.

Fees for residential garbage collection, including the cost for "tipping" at the landfill, will either continue to be collected by the carters individually or by the Town as part of the Town tax bill received in January.

If the Town elects to collect these fees, carters will be required to supply the name and address of all residential customers to the Town. This data will be maintained in a computer program. Monthly payments will be made to the carters for the service provided to their customers. Records of payment will be kept by the Town utilizing

the computer system, thus minimizing the work effort. This system will also provide scheduled monthly full payment to the carter, giving their business better cash flow.

If the carters bill individually, they will be responsible to pay the monthly bill for the tonnage dumped at the landfill. If the collection fees are collected by the Town, then deductions for the tipping charges accrued by the carter during the month will be made from the collection payments due them so that double handling of this fee will not occur.

Investment of any garbage collection fees collected by the District will provide added income which could be used to offset a portion of the district costs.

No capital costs for this division of the solid waste program will be required, however, as stated above, annual operation and maintenance expenses at the landfill, as well as capital expenditures for closing costs, will still be paid for by the Town and included as part of the Town Budget.

It is anticipated that the tipping fee at the landfill will be increased. This will affect the monthly payments made to the carters or the pay back given to the Town for tipping.

Using present numbers as an example, if the existing tipping fee of \$6 per ton was doubled, the annual increase to a single family residential unit with four inhabitants, each person (allowing for a reduction in weight for those items which will be recycled) contributing an average of 0.75 tons per year of garbage, would be \$18. This would equal \$1.50 per month and increase the present monthly collection fee in the unincorporated areas of the Town to about \$13.50.

The collection system charges to the Villages of Upper Nyack, Nyack and Spring Valley could be arranged indi-

vidually depending upon whether collection is done with municipal collectors or through a contract with a single carter.

COLLECTION OF BULK, WHITE GOODS, ETC.

The Town Highway Department currently has the responsibility for collecting bulk throughout the Town on a scheduled basis once a year. This bulk pickup responsibility becomes an expensive item in the Town Highway Department Budget and interferes with the completion of other important items of work.

It is proposed that the new regulations require the carters to pickup bulk items at least one a month, with the possible exception of the winter months of December, January and February, at the curb as a part of their service. The Sanitation Commission would approve the additional costs to be paid for this service. This fee would be collected by the Town as part of the Garbage and Refuse District charges collected annually with the Town tax.

Bulk pickup would not include large stumps or construction and demolition debris. This should be the homeowner's or contractor's responsibility. The carter should separate white goods such as hot water heaters, refrigerators, etc., from the bulk pickup so that it can be dumped at special places either at the landfill or the recycling center. Bulk would include spring and fall clean-up items, such as brush and tree limbs, provided they are cut and bundled in sizes required by landfill regulations.

Tires can be collected with the bulk materials, however, a separate additional charge will be collected for them at the landfill which the carter will be required to pay, but will be reimbursed by the District.

The monthly day of bulk pickup will be scheduled for each area by the carters. No bulk material should be allowed to be placed at the curb more than two days prior to its scheduled collection.

It is anticipated that the carters may be able to handle some of the smaller items with their regular garbage collection vehicle, however, a separate run for bulk items and white goods with another truck may be more feasible. This will be reviewed by the Sanitation Commission when establishing the bulk collection rates. In discussions with the carters, it has been indicated that a figure of between \$2 and \$4 per month per unit can be anticipated for this bulk collection service.

RECYCLING PROGRAM

In determining that a recycling program should be a major part of the solid waste management program for the Town of Clarkstown, an extensive amount of analysis and review went into the decision. The prime mover is the fact that limited landfill capacity is available to meet the long term needs of the Town as well as those of other communities who are also using the facility. A reduction in the quantity of solid waste going into the landfill is therefore a necessity. Figures of reductions ranging from 10% to 30% of present volume have been estimated. Estimates of goals as high as 50% have been made by the DEC who has recently established requirements that recycling be actively considered prior to the issuance of a Part 360 Permit for operation of a solid waste disposal facility.

Visits were made by Town officials to Camden, New Jersey and Toronto, Canada to see first-hand how recycling systems there are being run and to evaluate their possible use in Clarkstown. Attendance at several seminars and solid waste association meetings in New York and New England provided additional data on which to base a decision on which way the Clarkstown program should be directed.

In addition, discussions were held between the Town and the Carter's Association to establish the most effective methods of collection and allocation of costs.

One important fact which should be emphasized is that recycling is not a money making solution. The costs to collect, handle and transport recyclable goods will almost always outweigh the selling price received for these materials.

What can be accomplished, however, is a possible significant reduction in the total cost of handling solid waste, the benefits derived from returning reusable material to the market and the saving in landfill space previously required to contain these items.

The recycling plan selected for use in Clarkstown is one in which plastic recycling boxes are purchased by the Town and given to all single, two and three-family houses. In the Town of Clarkstown, this totals approximately 19,200 units. Each family is responsible for separating recyclable materials from their own waste stream. Recyclable items in the initial phase of this program will be newspapers (tied in a bundle or put in a paper shopping bag), clear or flint glass bottles and cans. These items will be put in the plastic recycling box which will be placed at the curb once a week on the garbage collection day which has also been designated as the recycling pickup day for your area.

The contents of these boxes will be emptied into a recycling pickup truck which serves your area. Newspapers, glass and cans will be put into separate sections in the truck so that separation is made at the source. The box is left behind for continued use on recycling days. It is estimated that perhaps 700 units can be served by a recycling truck per work day and that seven trucks, including one standby vehicle, would be required to serve the Town on a five day work week.

A recycling center to receive the recyclable material would be constructed on the Town owned field adjacent to the south side of the landfill along Route 303. All trucks delivering recyclable items would be weighed on the

existing landfill scale before going to the recycling center so that a weight total could be kept of the material diverted from the landfill.

The building at the recycling center would be of the Armco steel shell type. It would have sufficient room to dump and store the material delivered during a day. It would also be equipped with a baler for compacting paper and cans into bales which could more easily and efficiently be transported to customers buying the material. A small office and toilet facility would also be provided.

A payloader and small dozer would be required to handle material at the recycling center. Several small bins as well as large roll-off containers in which materials could be stored and shipped would also be needed as well as a truck for hauling the material to customers.

The following are estimated capital and annual operation and maintenance costs for the proposed recycling center and the recycling collection system trucks and boxes, to indicate the amount of funding necessary for this phase of the project.

RECYCLING CENTER AT LANDFILL

Estimated Capital Costs:

Site Work—Entrance road off Rte. 303, Road & Bridge from Landfill to Recycling Center, Grading, misc.	\$30,000
Foundation Piles	62,000
Concrete Foundation	250,000
Interior Separation Walls	25,000
Metal Building w/Insulation	145,000
Office & Toilet Area	8,000
Heating, Ventilation & Electrical	40,000
Baler	200,000
Subtotal	\$730,000
1 Payloader	70,000
1 Yard Donkey	40,000
4 Bins (@ 2,000 ea.)	8,000
3 Trailers (@ 40,000 each.)	120,000
2 Tractors (@ \$70,000 ea.)	140,000
Subtotal	\$378,000
Total	\$1,108,000
Contingencies (10% ±)	112,000
	\$1,220,000
Administrative, Legal & Engineering Fees (15% ±)	180,000
Total	\$1,400,000

Estimated Operation & Maintenance

Employees (Salary including benefits)	
Equipment Operator/Supervisor	\$45,000
2-Laborers	70,000
1-Truck Driver	40,000
1-Secretary	25,000
Subtotal	\$180,000
Utilities (Elec., Heating, Ventilation, etc.)	20,000
Maintenance	15,000
Payloader & Yard Donkey Operation (Fuel, Oil, Tires, Maintenance, etc.)	10,000
Haul Costs (Fuel, Tires, Oil, Lubrication, Maintenance, Insurance, etc.)	20,000
Subtotal	65,000
TOTAL	\$245,000/yr.

Note: Annual O&M charges will increase each year due to employee raises and increasing maintenance and hauling costs. An average rate of 5% may be assumed.

RECYCLING COLLECTION SYSTEMEstimated Capital Costs

Recycling Boxes-22,000 Boxes @\$4.50 per Box	\$100,000
Collection Trucks-7 trucks @\$50,000 per truck	350,000
Pickup Truck	25,000
Total	\$475,000
Administration, Legal & Engineering (10% ±)	45,000
Total	\$520,000

Estimated Operation & Maintenance

6 Trucks operating per day (Estimate 70 mi/day/truck)	
Driver (Salary + Benefits, etc.)	\$35,000
Gasoline	4,500
Tires	1,200
Insurance	2,500
Oil, Lub, etc.	500
Maintenance & Miscellaneous	4,300
Administration and Overhead	8,000
Profit	4,000
Subtotal	\$60,000/Truck/yr.
6 Trucks @\$60,000 ±	\$360,000
Support Operation	20,000
TOTAL	\$380,000

It is anticipated that collection of the recyclable items will be accomplished by the licensed carters, either in individually organized groups or through the Carter's Association.

Collection routes will be established throughout the Town, to insure that all properties are served. Recycling boxes will be given to each residential unit.

The collectors will buy or lease the recycling collection trucks from the Town, who will purchase the trucks. Payment to the Town for these vehicles will be made either by the recycling collectors or the Association or be deducted from the recycling collection fees received by the Town in the yearly Town Garbage and Refuse District tax bill.

Maintenance, repair and operation expenses for these trucks will be that of the collectors.

The collection charge for a single family residential unit, using the estimated annual operation and maintenance costs and repayment figures for the truck developed in this report, is estimated between \$2 and \$3 per month.

Charges for the capital cost of the recycling center, together with its operation and maintenance expenses, will be billed to all properties in the Town on an ad valorem basis. Estimated tax rates for this portion of the project will be presented in the financing section of this report.

The following is an estimate of the income which may be anticipated at the recycling center from material collected in Clarkstown from residential units. The estimated prices per ton used for the various materials are based on those obtained from firms who purchase these recyclable items. It should be anticipated that these unit prices will vary over periods of time, however, they represent an average of the current prices and may be used to establish an approximate yearly income.

Income

Newspaper

Assuming 19,000 units, 75% participation and an average of 7 lbs. of newspaper per week

19,000 Units x 0.75 x 7 lbs/wk=100,000 lbs/wk

100,000 lbs/wk—5 days—2,000 lbs/ton=10 tons/day

10 tons x \$15/ton avg.=\$150/day

\$150/day x 260 days/yr.=\$39,000/yr.

This is total from 1, 2 and 3 Family Units in Clarkstown. Estimated amount from commercial, industrial, co-ops, apartments, town houses, etc.=\$10,000/yr.

Newspaper Total=\$49,000/yr.

Glass

Assume 5 tons/day

5 tons/day x 260 days=1,300 tons/yr.

1,300 tons/yr. x \$45/ton avg.=\$58,500/yr.

Ferrous

Assume 3 tons/day

3 tons/day x 260 days=780 tons/yr.

780 tons/yr. x \$50/ton avg.=\$39,000/yr.

White Goods

Estimate—\$10,000/yr.

TOTAL ESTIMATED FIRST YEAR INCOME

Newspapers	\$49,000
Glass	58,500
Aluminum	65,000
Ferrous	39,000
Misc.	10,000
	<hr/>
	\$221,500

In addition to this income from the sale of recyclable material, savings will also accrue to the district because the reduced tonnage being deposited in the landfill will mean lower total tipping fee costs to the residents. At the present rate of \$6/ton, the approximate 20 tons/day of recyclable material would have cost an additional \$120 at the landfill. This would amount to some \$31,000 per year. If the new tipping fee were doubled, the amount saved would be \$62,000 per year.

LEAF PICKUP AND COMPOSTING

Leaf pickup has been accomplished by the Town Highway Department over the past years. The majority of these leaves have been deposited at the Town landfill.

It is proposed that the Highway Department, possibly using additional suction equipment, will still collect the leaves, however, disposal of the leaves will now be accomplished by composting. No leaves will be accepted at the Town landfill.

The most suitable site, of those reviewed, is the one on the Town owned French Farm site. The terrain, soil condition, access roads and well wooded buffer all contribute to making this 4.0 acres ideal for composting the 16,500 cubic yards of leaves generated in the Town per year. Site clearance at French Farms will not be difficult as the old leaves at this site can be pushed to the side to form part of a protective berm. From the conservation viewpoint the area is already cleared so that no trees have to be cut. The location of the site, by virtue of not being in an environmentally sensitive area will make it easier to obtain DEC approval.

The composting system is a process based on the windrow method, that compost leaves fast but in an odorless, clean and safe manner. The major components are balanced to create a conducive macro and micro environment necessary to achieve the desired results at an economical cost.

The advantages of the system employed in this program are:

1. Odorless process
2. Clean and safe
3. Fast—composts leaves within six months
4. Composts more leaves per acre than other method. (5,000 cubic yards of compacted leaves to an acre each six month period)
5. Economical—low capital outlay and low operating cost
6. Flexible system tailored to the specific needs of the community.

An area requirement of one acre for 5,000 cubic yards of leaves (1,000 tons) is required for the actual composting operations per six month period. By planning to compost leaves collected during fall and then later in spring, the system can increase the capacity of one acre to 7,500 cubic yards or 1,500 tons of leaves. This is the case for Clarkstown where 13,000 cubic yards of leaves are expected to be collected during fall and 3,500 cubic yards during spring. The proposed site is land previously acquired for "municipal purposes". The total acreage of the site is 9.8 acres with a large cleared area in the center. This cleared area measures 4.0 acres and will be used for the actual composting operation.

At the end of composting process, the initial volume of leaves will be reduced by a ratio of 6:1, therefore, the estimated 16,500 cubic yards of leaves will produce 2,750 cubic yards of leaf humus.

The leaf humus produced is proposed to be disposed of by allowing residents to take it free for their own use, use on Town properties for landscaping and sale of any surplus.

The estimated annual cost for the composting system proposed will be \$3.00 per cubic yard of leaves, which

totals \$49,500 for the estimated 16,500 C.Y. volume. The operating cost has been estimated at \$1.00/C.Y. or \$16,500 per year.

An initial consulting fee for advice on site preparation and training of Town personnel would be \$4,000.

The equipment necessary for operation of the composting facility will be a front-end loader, watering truck, a "rotavator" and a tractor (for a period of two weeks) and a sprayer with a capacity of 150 gallons mounted on a truck or tandem that can be pulled by any vehicle.

Initial site preparation, estimated at a maximum of \$7,000, and the cost of the sprayer and rotavator, about \$6,500, will be additional equipment expenditures required only in the first year. The required loader and water truck will be obtained from the Town Highway equipment pool when needed.

The annual costs for the operation of the composting system will be included as a general Town charge for the unincorporated area. The estimated tax rate and annual charge to an average residential unit will be presented in the financing section of this report.

An alternative to composting all of the leaves by the Town at French Farms would be to deliver a percentage of the leaves to Lederle (American Cyanamid Company) for use in their DEC approved composting operation.

FINANCING

Financing will be accomplished using the following methods for collecting service charges, operating and maintenance costs and capital costs. These are:

1. Direct billing to all residential and commercial properties by the carters for garbage collection and disposal at the landfill site.
2. Bulk and recycling collection costs will be charged to residential units and will be collected as a District charge.

3. The recycling center will be collected as a District charge from all properties within the Town on an ad valorem basis.
4. The composting charges will be collected as a general Town charge for the unincorporated areas of the Town.

Capital costs will be financed by Town general obligation bonds. The period of bond repayment will vary depending upon the type of facility or equipment purchased. For the calculations presented in this report the bond repayment period for the recycling center building, roads and site work will be 20 years, while the repayment period for all equipment will be five years.

A figure of 7 percent has been used as the interest rate for all bonds.

In establishing the bond repayment schedule, the State's "50% Rule" has been applied. This enables a division of the annual repayment of the principal amount in a manner which will allow a lower payment to be made in the initial years with higher payments due in the later years when the Town population has increased and the resulting unit costs will still be kept low.

Using the bond repayment schedules derived for the capital costs, the following charges have been calculated for various years during the bond repayment periods.

Recycling Center Building (\$925,000, 20 yr. bond)

Year	Principal	Interest	Total
1	\$38,000	\$64,750	\$102,750
5	38,000	54,110	92,110
10	50,000	40,810	90,810
20	57,000	3,990	60,990

Recycling Center Equipment (\$475,000, 5 yr. bond)

Year	Principal	Interest	Total
1	\$80,000	\$33,250	\$113,250
5	120,000	8,400	128,400

Recycling Collection Equipment (\$520,000, 5 yr. bond)

Year	Principal	Interest	Total
1	\$90,000	\$36,400	\$126,400
5	135,000	9,450	144,450

The following are the assessed valuation figures, rounded to the nearest million dollars, for the unincorporated portion of the Town of Clarkstown, the Village of Upper Nyack, and that portion of the Villages of Nyack and Spring Valley within the Town of Clarkstown. The figures are given for single, double and three family residential units and commercial, apartment, condominium, townhouses and vacant land.

	Assessed Valuations		
	Residential	Commercial, etc.	Total
Clarkstown	\$2,549	\$513	\$3,062
Upper Nyack	91	8	99
Nyack	0.15	13	13
Spring Valley	10	18	28
Totals	\$2,650	\$552	\$3,202

Note: Figures are given in million dollars.

The number of single, two and three family residential units in the Town of Clarkstown was also obtained.

Single Family	18,489
Two Family	533
Three Family	54

This totals 19,717 dwelling units.

These annual bond repayment figures, assessed valuations and number of residential units were used to determine the annual charges and tax rates for the various phases of the total solid waste management project. A summary of these charges for the first year are given below.

Garbage Collection and Tipping Fee

Between \$12 and \$14 per Residential Unit per Month

Final rate to be set by Sanitation Commission

Residential units billed monthly by carters.

Bulk Pickup

Between \$2 and \$4 per Residential Unit per Month

Final rate to be determined by Sanitation Commission

Residential units to be billed annually with Town tax bill.

Recycling Collection System

Equipment	\$126,400
Operation and Maintenance	380,000
Total	\$506,400

\$506,400	=	\$25.69 per year, per unit
19,717 units	=	\$2.14 per month, per unit

Final rate to be determined by Sanitation Commission
Residential units to be billed annually as a District charge.

Recycling Center

Building	\$102,750
Equipment	113,250
Operation & Maintenance	245,000
Subtotal	\$461,000
Less Estimated Income and Reductions	283,000
Total	\$178,000
<hr/>	
\$178,000	= \$0.056 per thousand A.V.

All properties in District to be billed annually as a District charge.

Composting

Consultant Fee	\$4,000
Site Work	7,000
Equipment	6,500
Composting System	49,500
Operating Costs	16,500
Total	\$83,000
<hr/>	
\$83,000	= \$0.027 per thousand A.V.
<hr/>	
\$3,062 million A.V.	

All properties in unincorporated portions of Clarkstown to be billed annually with Town tax bill. Incorporated portions of Clarkstown wishing to dispose of leaves at the composting facility will be charged at a rate of \$5 per cubic yard.

It should be noted that no allowance for State aid in the amount of \$50,000 per community has been included in these calculations. Neither was the anticipated assistance from Rockland County to initiate this recycling project, which will serve the lower portion of the County, been included. If and when these grants become available, they can be used to significantly reduce the annual charges to the District.

TYPICAL COSTS

Using the annual rates developed for capital costs and operation and maintenance expenses, the following anticipated charges, for those phases of the project for which the Town will collect the fee for, a typical residential user can be estimated.

Single Family Residential Unit

Assessed Value	Annual Charges			Total
	Bulk	Recycling *	Compost	
\$100,000	\$36	\$32	\$3	\$71
150,000	36	34	4	74
200,000	36	37	6	79
250,000	36	40	7	83

* These costs include ad valorem and use charges.

These figures average approximately \$7 per month.

The monthly garbage collection portion of the total bill will still be collected by the carter.

**Exhibit A to First Amended Answer—
Order of the Hon. Alfred J. Weiner, A.J.S.C.,
Dated October 18, 1990 [296-297]**

**SUPREME COURT—STATE OF NEW YORK
IAS PART: ROCKLAND COUNTY**

Present: HON. ALFRED J. WEINER
Acting Justice of the Supreme Court

Index No. 5433/90

Motion Date Oct. 12, 1990

C & A CARBONE, INC.,
Petitioner(s)

for a Judgment Pursuant to Art. 78 of the
Civil Practice Laws and Rules,

-against-

CHARLES E. HOLBROOK, Supervisor of the Town of
Clarkstown, JOHN R. MALONEY, STEVEN C. KUNIS,
ANN MARIE SMITH and RALPH F. MANDIA, constitut-
ing the TOWN BOARD OF THE TOWN OF CLARKSTOWN,
Respondent(s)

ORDER

The following papers numbered 1 to 8, read on this
motion by petitioner for Article 78 relief to compel the
respondents to render a decision:

Notice of Petition/Petition/OSC/Affidavits	1, 2
Answering Affidavits	5, 6
Replying Affidavits	8
Filed papers	3, 4, 7

Upon the foregoing papers, it is ordered that this
application is disposed of as follows:

Petitioner filed an application for a special permit with
respondents on June 23, 1989. On July 12, 1989, the
respondent Board referred the matter to the Town of
Clarkstown Department of Planning and Development.
In September, 1989, the Planning Board recommended
approval of the special permit and the respondent Board
held a public hearing on November 14, 1989. A traffic
study was subsequently filed on December 10, 1989 pur-
suant to the respondent Board's request.

When a Town Board reserves to itself the responsibility
to pass on applications for special permits instead of dele-
gating the responsibility to the Board of Appeals, it is
subject to the same time restraints under the Town Law
as the Board of Appeals. *Town of Huntington v. Town
of Oyster Bay*, 57 Misc 2d 821. Pursuant to Town Law
Sec. 267(5), the Board of Appeals has sixty (60) days
to render a decision.

The matter was fully submitted on December 10, 1989.
To date, respondents have not made a determination.

Accordingly, this application is granted to the extent
that the respondents are directed to render a decision on
petitioner's special permit application within forty-five
(45) days from the date hereof.

Dated: Oct. 18, 1990 Ent: 10/9/91

/s/ Illegible
A.J.S.C.

To: Granik, Silverman, Sandberg, Campbell
Nowicki and Resnik
Attorneys for Petitioner
254 So. Main St., PO Box 370
New City, NY 10956

Murray N. Jacobson, Esq.
Town Attorney, Town of Clarkstown
10 Maple Avenue
New City, NY 10956

**Exhibit B to First Amended Answer—
Order of the Hon. Alfred J. Weiner, A.J.S.C.,
Dated February 27, 1991 [298-299]**

**SUPREME COURT—STATE OF NEW YORK
IAS PART: ROCKLAND COUNTY**

Present: HON. ALFRED J. WEINER
Acting Justice of the Supreme Court

Index No. 7189/90
Motion Date Jan. 4, 1991

C&A CARBONE, INC.,
Petitioner(s)

for a Judgment Pursuant to Article 78 of the
Civil Practice Laws and Rules

-against-

CHARLES E. HOLBROOK, Supervisor of the Town of
Clarkstown, JOHN R. MALONEY, STEVEN C. KUNIS,
ANN MARIE SMITH and RALPH F. MANDIA, constitut-
ing the TOWN BOARD OF THE TOWN OF CLARKSTOWN,
Respondent(s)

ORDER

The following papers numbered 1 to 11, read on this
motion by petitioner for Article 78 relief:

Notice of Petition/Petition/OSC/ Affidavits	1, 2
Answering Affidavits	5
Replying Affidavits	9
Filed papers	3, 4, 6-8, 10, 11

Upon the foregoing papers, it is ordered that this appli-
cation is granted.

Pursuant to petition dated June 23, 1989, petitioner
submitted an application to the Town Board of the Town
of Clarkstown (hereinafter the board) seeking a special
permit to allow the maintenance and use of a portion of
the premises as a "recycling facility" as such term is de-
fined in Section 106.3 of the Zoning Code of the Town
of Clarkstown.

The premises are located on Western Highway, West
Nyack, New York, in a manufacturing zone and are cur-
rently being used as a truck repair facility. The parcel
is in an area zoned to allow a recycling facility with a
special permit.

A public hearing was held on November 14, 1989.
On November 27, 1990, the board denied petitioner's
special permit application to conduct a recycling facility
for the reasons of public health, safety and welfare.

Petitioner now seeks to vacate the board's determina-
tion alleging that it was arbitrary, capricious, unreason-
able and was without foundation in fact or law. Respond-
ents oppose the application claiming there will be in-
creased traffic congestion and the petitioner will use the
facility as an illegal dump.

Prior to the public hearing, the Rockland County Plan-
ning Board approved the application subject to certain
conditions and the Clarkstown Department of Environ-
mental Conservation reported no environmental impact.

At the public hearing, several residents made statements
expressing their concerns over increased traffic congestion
if the application was granted. Subsequently, the peti-
tioner submitted a detailed traffic study report concluding
that the flow of traffic on Western Highway is "stable and
uncongested, with a great deal of unused capacity avail-
able to accomodate future increases in traffic". Respond-
ents did not conduct their own traffic study.

Where a legislative body reserves to itself the power to grant a special permit, it is free to consider matters related to the public welfare. *Cummings v. Town Board*, 62 NY2d 833. The only limitation upon the exercise of this discretion is that it must not be arbitrary or capricious. *Matter of Buitenkant v. Robohm*, 122 AD2d 791.

An ordinance which permits a special exception use in a particular zoning district amounts to a legislative finding that the use accords with the zoning plan and that it will not adversely affect the surrounding area. *Matter of C&B Realty Co. v. Town Board of the Town of Oyster Bay*, 139 AD2d 510.

As against the traffic experts' report submitted by petitioner, there are only the general objections of neighboring land owners which are insufficient to justify denial of a special permit. *Matter of North Shore Equities v. Fritts*, 81 AD2d 985. *Matter of Huntington Health Care Partnership v. Zoning Board of Appeals*, 131 AD2d 481.

Special permit applications may not be denied without adequate evidence to support such denial. *R&T Realty Assoc. v. Amelkin*, 145 AD2d 636. The lack of evidence to support the findings of the board that the application was denied for reasons of public health safety and welfare is not overcome by the board's contentions that they were, in part, based upon the personal knowledge of its members, inasmuch as the board's determination rendered contains only conclusory statements without supporting facts, such as a traffic study, thereby precluding judicial review. *Matter of C&B Realty Co. v. Town Board of the Town of Oyster Bay*, supra.

Additionally, respondents' contention that petitioner will utilize the facility as a dump in violation of the zoning law is totally without basis.

Accordingly, the board's denial of the special permit was improper. *Matter of Lee Realty Co. v. Village of Spring Valley*, 61 NY2d 892.

The board is directed to issue the special permit subject to the possible imposition of reasonable conditions such as those recommended by the Rockland County Planning Board, the Clarkstown Planning Board or any other reasonable conditions, which will minimize any adverse impact upon the surrounding area. *Matter of Old County Burgers Co. v. Town Board*, 127 AD2d 772.

To: Granik, Silverman, Sandberg,
Campbell, Nowicki & Resnik
Attorneys for Petitioner

MURRAY N. JACOBSON, ESQ.
Town Attorney/Respondent

Dated: Feb. 27, 1991 Ent: — /s/ [Illegible]
A.J.S.C.

**Exhibit B to Silverman Affidavit—
Affidavit of Angelo Carbone, Sworn to April 29, 1991
[331-339]**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

91 CIV. 2105 (CLB)

C & A CARBONE, INC., RECYCLING PRODUCTS
OF ROCKLAND, INC., and C & C REALTY, INC.,
Plaintiffs,

-against-

THE TOWN OF CLARKSTOWN and CLARKSTOWN
RECYCLING CENTER, INC.,
Defendants.

AFFIDAVIT IN SUPPORT

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

ANGELO CARBONE, being duly sworn, deposes and says:

1. I am the President of C & A Carbone, Inc., Recycling Products of Rockland, Inc. and C & C Realty, Inc., plaintiffs in this action. As such, I am fully familiar with the facts set forth in this affidavit, and this affidavit is respectfully submitted to the Court in support of an application brought on by our attorneys for a temporary restraining order.

2. The relief sought herein is a temporary restraining order against the enforcement of a statute which I

believe is void on its face or, if not void on its face, so clearly violative of my Constitutional and statutory rights that this Court should enjoin its enforcement. The statute is only being enforced against the plaintiffs in this case because there are no other business entities in the Town of Clarkstown which are involved in refuse disposal within the terms of the Local Law.

3. Our business is relatively simple to describe. We do the following:

(a) There is brought to our facility refuse which emanates from sources outside of the State of New York, and it is brought to our facility by various licensed interstate commerce carriers.

(b) Refuse is brought to us from areas within the State of New York but not emanating in the Town of Clarkstown.

(c) This refuse is processed and that which is recyclable is baled or otherwise packaged and sold to facilities out of the State of New York.

(d) The remaining refuse is baled and similarly sold to users of this refuse outside of the State of New York. Our users are termed "resource recovery centers" which, in everyday English, translates facilities which burn the refuse to create power. In some instances, the users of our refuse are landfills. The shipments to the users of our refuse are likewise made out of state on trucks which are duly licensed by the I.C.C.

4. Our charge to those who dispose of their refuse at our facility is \$70 per ton.

5. Being the only such facility in the Town of Clarkstown, competition has nevertheless developed. Our existence as a competitor of the Town of Clarkstown has as its genesis in contractual arrangements by the Town with its co-defendant, Clarkstown Recycling Center, Inc. The relationship has the following attributes.

(a) All waste emanating in the Town of Clarkstown must by Local Law be brought to a facility constructed by Clarkstown Recycling on property owned by the Town of Clarkstown.

(b) At this point, Clarkstown Recycling bales the refuse and ships it out of the State to various landfill operators, including the very same landfills to which some of our waste is shipped. Clarkstown has also contacted our trucking brokers (following a police seizure of our records) seeking the names and locations of those "garbage-to-energy" facilities to which our non-landfilled waste is shipped.

(c) The agreement between the Town of Clarkstown and its co-defendant, Clarkstown Recycling, is that the co-defendant will charge \$81 per ton to the local refuse haulers that collect Clarkstown refuse who must, by license and Town legislation, deposit Clarkstown refuse at the facility erected by Clarkstown Recycling. The collectors pay \$81 per ton to Clarkstown Recycling. (The Town of Clarkstown has entered into an agreement with the adjoining Town of Orangetown to handle its refuse at a cost of \$82 per ton. Where the additional \$1 ultimately winds up is not yet known.)

(d) The defendant Clarkstown Recycling has built this facility to perform the above functions with its own or borrowed funds; and in order to assure its profitability, it has received from the defendant Town of Clarkstown a guarantee of tonnage which, when multiplied by the \$81 per ton, will pay off the capital investments, the operating costs and, we presume, allow a modest profit. The agreement provides that at the expiration of five years, the Town can acquire the multi-million dollar facility for the payment of \$1.00.

6. If the above recitation of facts represented the totality of the relationships between plaintiffs and defendants, no one could complain because it would merely

mean there was another competitor. The fact that our charge is \$72 per ton and the Town's is \$81 or \$82 would be a competitive advantage to us. To destroy its competition, at least with respect to refuse emanating in the Town of Clarkstown, would be an advantage to Clarkstown Recycling.

7. Not content with letting economics dictate whose business will be allowed to remain, the Town of Clarkstown has passed Local Law No. 9 of 1990. Local Law No. 9 of 1990 is fully set forth in Exhibit "A" annexed hereto. The critical portion of Local Law No. 9 of 1990 is Section 5. Section 5 takes the position that any refuse physically within the Town of Clarkstown is subject to the Clarkstown ordinance, its origin being immaterial, and, under the circumstances, must be disposed of at Clarkstown facility. Any refuse physically found within the Town of Clarkstown by legislative action makes it Clarkstown refuse.

8. In the enforcement of this law, which of course has the effect of placing your deponent out of business, the Town has used its full powers, inclusive of police powers, to enforce the ordinance. Annexed hereto and marked Exhibit "B" is an affidavit from Gil Font, one of the trucking brokers, setting forth the participation of the Clarkstown Police in the enforcement of the ordinance. Annexed hereto and marked Exhibits "C" and "D", respectively, are affidavits submitted by two Police Officers of the Town of Clarkstown detailing in less graphic terms their participation in the enforcement of the Town's ordinance.

9. In the affidavits of the Police Officers, which affidavits appeared in an application by the Town for a judicial enforcement of its ordinance, they make reference to the fact that certain of the refuse seemed to emanate from the Town of Clarkstown. The only answer which can be given with respect to that allegation is that the area in which the Police Officers examined the refuse they

had taken from out-of-state sources was at the place of business of Clarkstown Recycling. There will be submitted, should this matter ever proceed to trial, testimony that the refuse was examined at the identical location where the Town of Clarkstown's refuse was deposited. This comingling would be unavoidable but would have the desired result of showing that there was Clarkstown refuse at the site. There is further evidence of this transparent attempt to show a local law violation by virtue of the fact that the weight going in was 700 pounds less than the weight for which a charge was being made.

10. The Town of Clarkstown in the pursuit of the enforcement of its ordinance has brought an application before the Supreme Court, Rockland County, in which it has requested judicial enforcement of its ordinance which declares that any refuse physically within the Township must be disposed of at the facility of its co-defendant, Clarkstown Recycling. The Town has also sought an injunction prohibiting the plaintiffs from taking Clarkstown refuse to any location other than the facility of Clarkstown Recycling. Since the plaintiffs hardly handle or deal with any Clarkstown refuse, the question of enjoining such conduct was moot and of no moment. The Supreme Court in Rockland County has refused to issue an injunction with respect to refuse emanating from outside of the Township. At a conference with respect to the application of the Town of Clarkstown, we agreed to place a \$10,000 bond with respect to our continued handling of non-Clarkstown refuse, the alternative being totally forced out of business.

11. The police harassment along the New York State Thruway and other interstate roads continued with respect to shipments coming to our place of business, and finally a loud enough complaint was heard by Justice Lefkowitz handling the injunction matter so that the harassment stopped.

12. The Town's position is clearly and articulately set forth in an affidavit submitted in the Supreme Court ac-

tion by the Supervisor of the Town. (See Exhibit "E" attached hereto.) Local Law No. 9 of 1990 has an economic purpose; its purpose is to help the Town meet its contractual guarantee to its co-defendant so that the facility will never be in a position to ask the Town to pay a penalty for failure to meet their minimum tonnage guarantee. The Town by Local Law No. 9 of 1990 has now ensured that its minimum guarantee will be met by appropriation of the plaintiffs businesses. The Town having assured compliance with its contractual provisions, will in five years be the recipient of a multi-million dollar facility for \$1.00. There will be no competition as it has been legislated out of existence. The Town does this for economic reasons and not as an instrument or manner of accomplishing a governmental policy. It is the money which is important.

13. This injunction is being sought because the ordinance is so clearly in violation of the commerce clause of the Constitution, is so violative of the Federal Antitrust Act and is so violative of your deponent's civil rights that in order to continue in business, the Town should be temporarily stopped from legislating its own economic advantage.

14. The Town, in the pursuit of its own economic betterment, has stated that the facility and businesses of your deponent are subject to a special permit which would allow plaintiffs' use in the zoning designation of the real property. We have applied for the special permit; the application was met with silence. The application had been approved by the various subsidiary boards and administrative officials, but the Town took no action. A mandamus petition was brought against the Town to have it decide the application for a special permit for the very use and purposes that are set forth herein. The Court directed the Town to make a decision on our application. (See Exhibit "F" attached hereto.) The Town, which should come as no surprise to the Court, denied

the application. The denial was appealed in an Article 78 proceeding; the denial was overturned with appropriate directions to issue the permit. (See Exhibit "G" attached hereto.) The Town has appealed the determination to the Appellate Division, Second Department, and has made full use of the statutory stay granted to a municipality. Whether the appeal will be prosecuted or not is a matter of conjecture for at the present time, notwithstanding the limitations of time to process an appeal in the Appellate Division, no record or brief has as yet been received.

15. Your deponent has been in business since 1974 performing the functions as set forth in the opening of this affidavit. Your deponent would like to continue in business performing the functions as set forth in this affidavit. However, when one's competitor has the right to legislate and to make use of the police force to destroy competition, it is extremely difficult to stay in business. There is no question that our facility performed the functions as set forth in this affidavit for the very simple reason that for a period of some three years prior to the Town of Clarkstown becoming our competitor, we performed all of our services for the Town. During the approximately three-year period of time that we were performing these very same functions for the Town and paid by the Town, no question of our legality, operating permits and licensing by the DEC was ever brought up.

16. We maintain that our licensing with the DEC is proper. We continue in operation as best we can under the circumstances, but the Town has now engaged in a series of actions which all, of course, appear in the press and suggest that what we do is no longer legal or proper, although we had performed these services in the past for the Town. This is most clearly reflected in the fact that the Town of Clarkstown, prior to denial of its injunctive application and the full use of its police force, served upon us a search warrant and took all of our records. The

original records were never returned; copies were returned; and strangely the originals of our records, pursuant to a convenient subpoena, were given to the U.S. Attorney.

17. The Town of Clarkstown has been engaged in a series of trial-by-newspaper articles in which we are characterized as part of an illegal "Cosa Nostra" operation which, in addition to being untrue, is defamatory.

18. The Town has come to the conclusion that refuse, once to be avoided, is a substantial source of income. Your deponent knew that years ago, and one does not have to be a member of the illegal underworld, according to the Town, in order to realize that refuse is profitable. The Town in its sudden realization of profitability has decided that the profit belongs to it rather than to your deponent. It is this sudden realization and the actions of the Town which precipitate this litigation and prompt our request for damages and treble damages for the acts we have complained of herein.

/s/ Angelo Carbone
ANGELO CARBONE

[Notary Omitted in Printing]

**Exhibits to Reply Attorney's Statement of Glickel—
Correspondence, Dated June 4, 1991 and Simplified
Informations, each Dated June 8, 1991 [382-385]**

New York State Department of Environmental Conserv.
Region 3
21 South Putt Corners Road
New Paltz, NY 12561-1696
914-255-5453

Certified Mail
Return Receipt Requested
P 426 205 935

June 4,

Mr. Angelo Carbone
C&A Carbone
183 Western Highway
West Nyack, New York 10994

Re: Facility No. 44T04
Clarkstown (T), Rockland County

Dear Mr. Carbone:

Yesterday, you were advised by Environmental Conservation Officer Mazurkiewicz that your facility appears to be operating in non-compliance with Special Condition 16 of the Permit to Operate the subject solid waste management facility. This condition requires that "this facility be operated in accordance with the plans and reports filed by the permittee . . .". The submitted and approved report, received March 19, 1987 states that the incoming waste will be approximately 90 per cent cardboard. A review of your three (3) Annual Reports covering the period from January 2, 1988 to June 30, 1990 reveals that the incoming waste stream is not consistent with this approved waste stream composition, because the wastes other than cardboard greatly exceed 10 per cent of the incoming waste stream.

The report dated November 20, 1989, which covered the period from January 2, 1988 to December 31, 1988, revealed that the cardboard shipped from your facility was 10.9 per cent of the incoming waste stream. The report dated November 10, 1989, which covered the period from January 2, 1989 to November 18, 1989, revealed that the cardboard shipped from your facility was 10.2 per cent of the incoming waste stream. The report dated September 17, 1990, which covered the period from November 19, 1989 to June 30, 1990, revealed that the cardboard shipped from your facility was 14.1 per cent of the incoming waste stream. Assuming that only half of the incoming cardboard was able to be recycled, the total of incoming cardboard was less than one-third of the proposed amount in the application. Conversely, the solid wastes other than cardboard, which were proposed in the application to be a maximum of 10 per cent, are at a minimum, over 70 per cent.

This is clearly a violation of the aforementioned permit condition. Violations of this nature are punishable by appropriate fines and penalties and may serve as the basis for permit revocation as well. The Department is reviewing its enforcement options with regard to past and recent violations. In the meantime, you are advised that continued acceptance of the various wastes consistent with the proportions demonstrated in your Annual Reports will be considered as a violation of Part 360 and will be subject to enforcement action by the Department.

If you have any questions concerning this matter, please do not hesitate to contact Mr. Ajay Shah at the White Plains suboffice, telephone (914) 761-6660 or myself at this office.

Respectfully,

/s/ Richard Gardineer, P.E.
RICHARD GARDINEER, P.E.
Regional Solid Waste Engineer
Region 3

cc: R. Mana
Town of Clarkstown
Town of Orangetown
J. Ferry
A. Ciesluk
ECO Mazurkiewicz
A. Klauss/A, Shah